

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

February 13, 2023

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 2022A00051
	)	
JS DESIGN AND BUILD, LLC	)	
D/B/A SPECTRA KITCHEN AND BATH,	)	
Respondent.	)	
_____	)	

Appearances: José Solis, Esq. for Complainant  
Christopher L. Scileppi, Esq., for Respondent<sup>1</sup>

ORDER

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. 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 on July 11, 2022. Complainant alleges that Respondent, JS Design and Build, LLC, d/b/a Spectra Kitchen and Bath, failed to properly complete Forms I-9 for forty-two individuals, in violation of § 1324a(a)(1)(B). On August 23, 2022, Respondent filed an answer and notices of appearance.

On August 31, 2022, the Court issued an Order for Prehearing Statements, directing that Complainant’s prehearing statement was due on September 30, 2022, and Respondent’s prehearing statement was due on October 31, 2022. On September 28, the Court received Complainant’s prehearing statement, but did not receive Respondent’s prehearing statement by the deadline. The Court issued a Notice and Order to Show Cause (Notice) on November 21, 2022, directing Respondent to file its prehearing statement, as well as a response showing good cause for its failure

<sup>1</sup> Attorney Andrew Ross was previously on the service list for this matter, as he was listed on the Certificate of Service attached to the complaint. However, given that he has not submitted a Notice of Appearance or otherwise appeared in this matter, the Court has removed him from the service list. See 28 C.F.R. § 68.33(f).

to timely file a prehearing statement, by December 11, 2022. Respondent did not file a prehearing statement by that deadline.

On December 16, 2022, the Court issued an Order on Complainant's Motion for Leave to Amend Complaint. *U.S. v. J.S. Design and Build, LLC d/b/a/ Spectra Kitchen and Bath*, 17 OCAHO no. 1460a (2022). In this Order, the Court granted Complainant's motion to amend the Complaint, and ordered Respondent to file an Amended Answer. The Court also provided Respondent one final opportunity to file a prehearing statement and a response showing good cause. Both filings were due no later than January 12, 2023.

On January 17, 2023, Respondent filed its prehearing statement. However, Respondent did not include an explanation for why its prehearing statement was untimely as directed in the Court's Order. Moreover, Respondent did not file an Amended Answer.

As explained in the previous Order, the Court may dismiss "a complaint or a request for hearing" upon its abandonment by the party who filed it. 28 C.F.R. § 68.37(b).<sup>2</sup> A party shall be deemed to have abandoned its complaint or a 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. Sal's Lounge*, 15 OCAHO no. 1394b, 3 (2022); *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 (1994).<sup>3</sup> Further, Federal Rule of Civil Procedure 55, a permissible guidance in OCAHO proceedings, *see* 28 C.F.R. § 68.1, instructs that a Court shall issue a default if a party against whom a judgment for relief is sought has failed to "otherwise defend." Fed. R. Civ. P. 55.

As Respondent has not filed an Amended Answer, nor made a proffer of good cause for its untimely prehearing statement, as directed by the Court, the Court may find its request for a hearing abandoned for failure to respond to orders issued by the Court. However, given the preference for resolving cases on their merits, *see United States v. MRD Landscaping & Maint., Corp.*, 15 OCAHO no. 1407c, 3 (2022), the Court will provide Respondent a final opportunity to file an Amended Answer and to provide an explanation for its failure to timely file its prehearing

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<sup>2</sup> OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

<sup>3</sup> 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 "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

statement and its Amended Answer. Upon receipt, the Court will determine if Respondent has demonstrated the requisite good cause for failing to file its Amended Answer and untimely prehearing statement and will decide whether to allow these untimely filings.

The Court therefore ORDERS that Respondent file a response with the Court within 21 days of this Order, in which it must provide facts sufficient to show good cause for its failure to timely file a prehearing statement and Amended Answer, and to file an Amended Answer.

SO ORDERED.

Dated and entered on February 13, 2023

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Honorable Jean C. King  
Chief Administrative Law Judge