

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
)	OCAHO Case No. 2023A00062
)	
UPRIGHT INSTALLATION SERVICES, CORP.,)	
Respondent.)	
)	

Appearances: Janelle A. Cleary, Esq., for Complainant
Upright Installation Services, Corp., pro se Respondent

ORDER TO SHOW CAUSE AND ORDER ON COMPLAINANT’S MOTION TO
SUBSTITUTE COUNSEL

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324s. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 16, 2023. Complainant alleges that Respondent, Upright Installation Services, Corp., violated 8 U.S.C. § 1324a(a)(1)(B).

This office sent Respondent a Notice of Case Assignment Regarding Unfair Immigration-Related Employment Practices (NOCA) and a copy of the Complaint on May 22, 2023, via certified U.S. mail. The NOCA directed that an answer was to be filed within 30 days of receipt of the Complaint, that failure to answer could lead to default, and that proceedings would be governed by U.S. Department of Justice regulations.¹

The U.S. Postal Service website indicates that the NOCA was served on Respondent on May 25, 2023, making Respondent’s answer due no later than June 24, 2023. *See* 28 C.F.R. §§ 68.3(a), 68.9(a). To date, Respondent has not filed an answer.

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

II. ORDER TO SHOW CAUSE

Under the OCAHO Rules of Practice and Procedure, to contest a material fact alleged in the complaint or a penalty assessment, a respondent must file an answer. 28 C.F.R. § 68.9(c). Failure to file an answer “within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.” 28 C.F.R. § 68.9(b). Further, “failure to respond to an Order may trigger a judgment by default.” United States v. Hotel Valet Inc., 6 OCAHO no. 849, 252, 254 (1996).² “If a default judgment is entered, the request for hearing is dismissed, AND judgment is entered for the complainant without a hearing.” Nickman v. Mesa Air Grp., 9 OCAHO no. 1106, 1 (2004).

However, it has long been OCAHO’s practice to issue an order to show cause before entering a default. *See* United States v. Shine Auto Serv., 1 OCAHO no. 70, 444 (1989) (Vacating Order Denying Default Judgment).

Respondent’s answer was due June 24, 2023, and to date, Respondent has not filed an answer. Accordingly, Respondent is ORDERED to file an answer, pursuant to 28 C.F.R. § 68.9(c), within 21 days of the date of this Order. Respondent is FURTHER ORDERED to file a submission that demonstrates good cause for its failure to timely file an answer, within 21 days of the date of this Order.

Should Respondent fail to file to respond as ordered or cannot show good cause, the Court may enter a default judgment against Respondent, pursuant to 28 C.F.R. § 68.9(b). Further, the Court advises Respondent that, if it fails to respond to the Court’s orders, the Court may conclude that it has abandoned its request for a hearing. *See* 28 C.F.R. § 68.37(b)(1); *see also* United States v. Hosung Cleaning Corp., 4 OCAHO no. 681, 776, 777 78 (1994). Dismissal of Respondent’s request for a hearing may follow. *See* 28 C.F.R. § 68.37(b).

² 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 on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

III. MOTION TO SUBSTITUTE COUNSEL

On July 19, 2023, Complainant filed a Motion to Substitute Counsel. Complainant’s Attorney Assistant Chief Counsel (ACC) Stephanie Robins requests that the Court substitute ACC Janelle Cleary in this matter, as ACC Robins will be leaving the employ of the Department of Homeland Security’s Officer of the Principal Legal Advisor. On August 14, 2023, ACC Cleary filed a Notice of Appearance.

OCAHO’s Rules of Practice and Procedure provide that “[w]ithdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion.” 28 C.F.R. § 68.33(g). Given Complainant’s explanation, and the fact the motion is unopposed, Complainant’s Motion to Substitute Counsel is GRANTED.

SO ORDERED.

Dated and entered on September 19, 2023.

Honorable John A Henderson
Administrative Law Judge