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

November 20, 2015

UNITED STATES OF AMERICA, Complainant, v. QUICKSTUFF, LLC, ITS MEMBER MARIA CASTILLO, AND A&C STAFFING, LLC, Respondent.	)	8 U.S.C. § 1324a Proceeding OCAHO Case No. 15A00064

FINAL DECISION AND ORDER OF DISMISSAL

Appearances:

For the Complainant:
Patricia M. Medeiros

For the Respondent:
Jeremiah J. Atkins

I. PROCEDURAL HISTORY AND BACKGROUND INFORMATION

The U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE or the government) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on July 2, 2015, alleging that Quickstuff, LLC (Quickstuff), Maria Castillo (Castillo), and A&C Staffing, LLC (A&C), engaged in 4964 violations of the employment eligibility verification provisions of 8 U.S.C. § 1324a(b) and 8 C.F.R. § 274a.2(b), for which the government seeks civil money penalties in excess of five million dollars. The matter arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2012).

This office sent a Notice of Case Assignment to Quickstuff, Castillo, and A&C by certified mail on July 9, 2015, together with a copy of the complaint and its attachments. The Notice directed

that an answer to the complaint was to be filed within thirty days of receipt, that failure to answer could lead to default, and that proceedings would be governed by Department of Justice regulations.[1] The Notice also advised Quickstuff, Castillo, and A&C that the governing procedural rules for the forum could be found at 28 C.F.R. pt. 68, and that a Portable Document Format (PDF) copy of the rules could be found on the OCAHO webpage. The Notice advised further that "[i]t is imperative that you obtain a copy of the rules immediately and comply with their requirements in this case." It advised the recipients in addition that if they were unable to access the website or print a copy of the rules, this office would mail them a copy without charge upon request by telephone, and provided the telephone number to call. The U.S. Postal Service website reflects that delivery of the complaint package to the respondents' counsel of record was completed on July 13, 2015, making the answer due no later than August 12, 2015. Quickstuff, Castillo, and A&C did not file an answer to the complaint, nor did they request additional time in which to do so. Neither did they make a telephone request for a copy of the rules.

OCAHO rules provide that a request for hearing may be dismissed upon its abandonment by the party who filed it, and that a party shall be deemed to have abandoned such a request where the party or its representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b)(1). On September 1, 2015, I accordingly issued a Notice and Order to Show Cause directing Quickstuff, Castillo, and A&C to show cause within fifteen days thereafter "why its request for hearing should not be deemed abandoned, or, in the alternative, show good cause for its prior failure to answer, and to file an answer which comports with 28 C.F.R. § 68.9." The notice advised further that "[a] failure to respond may result in dismissal" for abandonment pursuant to 28 C.F.R. § 68.37(b)(1). *See United States v. Hosung Cleaning Corp.*, 4 OCAHO no. 681, 776, 777-78 (1994).[2] A response to the show cause order was due on or before September 16, 2015.

On September 1, 2015, the government filed a Motion for Entry of Default. A party has a period of ten days from the date of service to respond to a motion. 28 C.F.R. § 68.11(b). Where service of the motion is by ordinary mail, another five days are added to the period. 28 C.F.R. § 68.8(c)(2). ICE's motion was mailed on August 28, 2015, so any response would have been due

[1] *See* Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2014).

[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 been 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.

by September 14, 2015. Quickstuff, Castillo, and A&C never responded to this motion, and the time allotted for doing so has long since elapsed.

On September 9, 2015, this office received a faxed copy of a letter from Victor Druziako to Sam Dotro, both strangers to these proceedings, with attachments consisting of copies of bankruptcy notices for Quickstuff and A&C. The letter states that Druziako represents the two companies in bankruptcy court, and also represents Maria Castillo in a separate proceeding in the U.S. District Court for the District of New Jersey, *Travelers Property Casualty Company of America v. Quickstuff, LLC, et al*., Civil No. 14-6105 (JEI/JS), which Druziako suggests should be administratively terminated without prejudice pending the outcome of the bankruptcy proceeding. The letter reflects that a copy was also sent to Jeremiah J. Atkins, counsel of record in this case. The letter concludes with an observation "for the benefit of Mr. Atkins" that Druziako had telephoned OCAHO that day to report the bankruptcy filings, and that OCAHO staff had informed him that a response to the show cause order was due on September 16, 2015, and that the bankruptcy filings might not make any difference in the outcome of this matter.

II. THE RESPONSE TO THE SHOW CAUSE ORDER

On September 16, 2015, I received a faxed three-page single-spaced letter addressed to me personally from Jeremiah J. Atkins, counsel of record. The letter sets out at length a history of the author's interactions with government counsel, starting with receipt of the Notice of Intent to Fine (NIF) on February 11, 2014, and summarizing various meetings and unsuccessful settlement discussions that ensued through June 2015. The letter states that the respondents "acted with diligence" upon receipt of the complaint by immediately providing a copy of the complaint to Druziako on or about July 13, 2015, and a copy of the subsequent motion for entry of default to him on or about September 1, 2015. Atkins Letter at 2.

The Atkins letter says further that "[i]n light of the already lengthy history of this matter," the respondents have not abandoned their request for hearing, but "[t]o the contrary, they have acted diligently in an attempt to resolve this matter since receipt of the Notice of Intent to Fine." *Id*. The letter explains that since the filing of the complaint, the respondents have acted on the advice of counsel, that any failure to respond "was due to a mistaken belief that the automatic stay under the Bankruptcy Code would apply," and that "[m]ore recently, I have been made aware that the automatic stay of the Bankruptcy Code, 11 U.S.C, § 362(a)(1), does not apply to an action by a governmental unit enforcing its police or regulatory powers." *Id*. at 2-3. Although the show cause order directed the respondents, inter alia, to file an answer complying with OCAHO rules, the letter did not proffer an answer. Instead, the letter concluded by asking that the "request for hearing not be deemed abandoned and that the respondents be permitted to file an answer by a date certain."

As the Atkins letter belatedly acknowledges, Quickstuff and A&C's bankruptcy filings have no effect on this proceeding. This is because the automatic stay provision of the Bankruptcy Act as amended, 11 U.S.C. § 362(a)(1) (2010), does not apply to "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police or regulatory power." 11 U.S.C. § 362(b)(4). This is not a new provision in the bankruptcy law. *See United States v. Garcia*, 7 OCAHO no. 950, 468, 470-72 (1997) (collecting cases). It is beyond cavil that ICE, as a part of the Department of Homeland Security, is a governmental unit. The government's actions in this forum, moreover, qualify as regulatory actions. *See United States v. A&A Maint. Enter., Inc.*, 6 OCAHO no. 852, 265, 271-72 (1996) (striking affirmative defense of bankruptcy as legally insufficient in an action under 8 U.S.C. § 1324a).

The Third Circuit, in which this case arises, has expressly recognized that Congress enacted the police and regulatory power exception to the automatic stay provision precisely for the purpose of ensuring that debtors could not improperly seek refuge under the stay in an effort to frustrate necessary governmental functions. *See United States v. Nicolet, Inc.*, 857 F.2d 202, 207 (3d Cir. 1988). It is accordingly in the public interest that the government be free to enforce our nation's immigration laws. As observed in *Garcia*, "[a]s a matter of public policy, a respondent cannot be allowed to insulate itself from these enforcement measures through the unilateral act of filing for bankruptcy." 7 OCAHO no. 950, at 472.

III. APPLICABLE STANDARDS

A. OCAHO Case Law

A party that fails to answer a complaint within the time specified is already in default, whether or not that fact is officially noted. *See Monda v. Staryhab, Inc.*, 8 OCAHO no. 1002, 86, 90 (1998). This means that the default must be excused before the party is permitted to answer. *Id.* (citing 10A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2692, at 85 (3d ed. 1998) (hereinafter Wright & Miller)). OCAHO rules provide that a failure to file an answer within the time provided may be deemed to constitute a waiver of the right to appear and contest the allegations, and that the Administrative Law Judge may thereafter enter a judgment by default. 28 C.F.R. § 68.9(b).

Default judgments are not favored in this forum. *United States v. Vilardo Vineyards*, 11 OCAHO no. 1248, 5 (2015). A showing of good cause is nevertheless a condition precedent to permitting a late answer, and where that showing is not made, a late answer may not be accepted. *United States v. Medina*, 3 OCAHO no. 485, 882, 889 (1993). Thus where no timely response was made to a request for the entry of a default judgment and the respondent proffered no good cause for the failure to file a timely answer, it was error for the Administrative Law Judge to deny the government's motion for entry of a default judgment and to permit a late filed answer.

United States v. Shine Auto Serv., 1 OCAHO no. 70, 444, 445-46 (1989); *see also United States v. Kirk*, 1 OCAHO no. 72, 455, 456-57 (1989) (granting default judgment where response to show cause order did not establish good cause for failure to answer).

Because the OCAHO rules themselves do not specifically address the standards to be applied in assessing the adequacy of a party's explanation for failure to file a timely answer, I look for guidance to the standards provided by the Federal Rules of Civil Procedure (Fed. R. Civ. P.), which "may be used as a general guideline in any situation not provided for or controlled by these rules, by the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1. In addition to the rules themselves, I consider the federal case law construing them, in particular, in cases from the Third Circuit. While those rules and cases are not directly controlling in this forum, they do provide the general principles that should be considered.

B. Pertinent Federal Rules of Civil Procedure

1. The General Rule Governing Extensions of Time

Rule 6(b), Extending Time, provides in general, with some exceptions,

> When an act may or must be done within a specified time, the court may, for good cause, extend the time:
>
> (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
>
> (B) on motion made after the time has expired if the party failed to act because of excusable neglect.

Thus in assessing a timely request for extension, the showing required is good cause, but where the request is untimely made, the showing that must be made includes both good cause and excusable neglect. *See generally*, 4B Wright & Miller, § 1165 (3d ed. 2002 & Supp. 2014).

In addition to imposing a more rigorous substantive showing when a request for extension is made after the deadline expires, courts have also insisted on the filing of a formal motion, not just a request, in the post-deadline context. *See, e.g., Drippe v. Tobelinski*, 604 F.3d 778, 783-84 (3d Cir. 2010) (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 896 n.5 (1990)). The general principle reflected in this rule is that the showing required to obtain an extension is a heavier one when the request is not timely made.

2. The Rules for Setting Aside a Default or Default Judgment

Rule 55(c), Setting Aside a Default or a Default Judgment, provides that a default may be set aside for good cause, but once a default judgment has actually been entered, the judgment may be set aside only on the grounds provided in Rule 60(b), Grounds for Relief from a Final Judgment, Order, or Proceeding. Although the text of the rules themselves suggests that good cause and excusable neglect are two different standards, courts have sometimes used them interchangeably. Cases in the Third Circuit, for example, have identified exactly the same factors as necessary for assessing motions in both contexts. *See, e.g.*, *United States v. $55,518.05 in U.S. Currency*, 728 F.2d 192, 195 (3d Cir. 1984).

> We require the district court to consider the following factors in exercising its discretion in granting or denying a motion to set aside a default under Rule 55(c) or a default judgment under Rule 60(b)(1): (1) whether the plaintiff will be prejudiced; (2) whether the defendant has a meritorious defense; (3) whether the default was the result of the defendant's culpable conduct.

Id. (internal citations omitted); *see also Int'l Bhd. of Elec. Workers v. Skaggs*, 130 F.R.D. 526, 529 n.1 (D. Del. 1990) (stating that "[n]otwithstanding the considerable authority which supports treating these motions differently, the Third Circuit appears to apply the identical standard in both cases").

More recently, however, the court has suggested in a different context that the good cause and excusable neglect standards have entirely "different domains." *See Joseph v. Hess Oil Virgin Islands Corp*., 651 F.3d 348, 356 (3d Cir. 2012) (quoting *Lorenzen v. Employees Retirement Plan*, 896 F.2d 228, 232 (7th Cir. 1990)). The court pointed to the advisory committee notes for the 2002 amendment of Rule 4(a)(5) of the Federal Rules of Appellate Procedure, which characterized the good cause and excusable neglect standards as not being interchangeable, and said one is not inclusive of the other.

> The excusable neglect standard applies in situations in which there is fault; in such situations, the need for an extension is usually occasioned by something within the control of the movant. *The good cause standard applies in situations in which there is no fault—excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.*

Joseph, 651 F.3d at 356 (emphasis in original). And in *Ragguette v. Premier Wines & Spirits*, the court incorporated a fourth factor into the excusable neglect standard. 691 F.3d 315, 324 (3d Cir. 2012) (citing *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507

U.S. 380, 395 (1993)). The so-called *Pioneer* factors include 1) the danger of prejudice to the other party, 2) the length of the delay and its potential impact on judicial proceedings, 3) the reason for the delay, including whether it was within the reasonable control of the movant, and 4) whether the movant acted in good faith. *Id.*

That consideration of a particular factor may be mandatory in one context should not rule out its discretionary consideration in another context, nor does it mean that other non-enumerated factors may not be considered as well.

IV. DISCUSSION AND ANALYSIS

While letter-pleadings from pro se parties are routinely accepted in this forum, filings by members of the bar are expected to conform to traditional standards of practice and professionalism. *See United States v. Patrol & Guard Enters., Inc.*, 8 OCAHO no. 1052, 801, 805 (2000). Like the letter-pleading in *Patrol & Guard*, the Atkins letter was filed in derogation of OCAHO rules. Requests are required to be made by motion, 28 C.F.R. § 68.11(a), and all documents filed are to be accompanied by a certificate of service, 28 C.F.R. § 68.6(a). Neither of these requirements was satisfied here. While fax filings are acceptable to toll the running of a time limit, the rules provide that hard copies are to be forwarded simultaneously. 28 C.F.R. § 68.6(c). Only one hard copy of the Atkins letter was ever received, although the rules require the filing of an original and two copies. 28 C.F.R. § 68.6(a). Despite these multiple failures to abide by OCAHO rules I nevertheless review the Atkins letter to ascertain whether it provides good cause for the previous (and now continuing) failure to file an answer.

The meaning of the term good cause is not self-evident. Black's Law Dictionary (10th ed. 2014) defines the term as "a legally sufficient reason . . . often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused." Webster's Third New International Dictionary (2001 ed.) provides that good cause means "a cause or reason sufficient in law, or that is based on equity or justice or that would motivate a reasonable man (sic) under all the circumstances." In practice, the term good cause is often conflated with the term excusable neglect, which Black's defines as being,

> a failure — which the law will excuse — to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party.

Neglect, BLACK'S LAW DICTIONARY (10th ed. 2014).

In assessing whether the Atkins letter shows good cause for the failure to answer, I first examine the facts and circumstances under which the default occurred, to the extent these are known. I then consider seriatim the various factors that might be relevant in resolving the issue, regardless of whether a particular factor is enumerated in a specific "test." The defaulting parties' burden here is to show good cause, and examination of the totality of the circumstances is necessary to inform the assessment as to whether the defaulting parties have shown some reasonable basis for their inaction. *Cf.* 4B Wright & Miller, § 1165, at 521 (3d ed. 2002) (because discretion may be exercised only for "cause shown," a party must demonstrate some justification for enlargement of time).

The record reflects that the complaint package was served on counsel of record on July 13, 2015, so the answer was due not later than August 12, 2015. 28 C.F.R. § 68.9(a). Thus on August 27, 2015, when the bankruptcy petitions were filed, the answer was already more than two weeks overdue, and the respondents were already in default. While the Atkins letter says it is unclear why there was a delay between the filing of the complaint and the filing of the bankruptcy petitions, that delay is immaterial because the answer was due by August 12, 2015, regardless of when the bankruptcy petitions were filed.

The Atkins letter did not proffer an answer, although a minimally sufficient answer could doubtless have been drafted in considerably less time than it took to prepare the three-page single-spaced letter asking for additional time.[3] Rather, the letter asserts that counsel "acted diligently" in two respects: 1) by sending Druziako a copy of the complaint on or about July 13, 2015, and a copy of the motion for entry of default around September 1, 2015; and 2) by making attempts to settle the matter starting with the receipt of the NIF in February 2014 and continuing through the filing of the complaint in June 2015. Atkins Letter at 2. But due diligence on the part of an attorney served with a formal complaint surely requires more than just sending a copy to someone else, and previous attempts to settle. Due diligence by an attorney served with a formal complaint requires some reasonable effort to either file an answer or request an extension of time before the period for filing an answer has expired. 28 C.F.R. § 68.9; Fed. R. Civ. P. 6(b)(1).

Although it is the defaulting litigant's burden to show that relief should be granted, *see Joseph*, 651 F.3d at 351, the Atkins letter does not address that burden, and makes no reference to the rules of this forum, to Rules 6(b)(1), 55(c), or 60(b) of the federal rules, to case law from any source, or to any other authority. While the letter says that no answer was filed because Atkins believed the automatic stay would apply to this action, no legal authority was cited that would support such a belief.

[3] Nothing in the show cause order can be construed to invite a request for additional delay in filing an answer; the order unequivocally gave the respondents a fifteen-day window of opportunity to comply.

The Notice of Case Assignment clearly spelled out precisely where OCAHO's published decisions are to be found on the EOIR website, in the Westlaw and LexisNexis databases, and in bound federal reporters containing OCAHO cases for volumes 1-8 at federal depository libraries nationwide. Any effort to consult that case law would have reflected a long line of authority since 1989 consistently holding that the automatic stay does not apply to enforcement proceedings under 8 U.S.C. § 1324a. *United States v. H&H Saguaro Specialists*, 10 OCAHO no. 1144, 2 (2012); *United States v. Agripac, Inc.*, 8 OCAHO no. 1026, 388, 389-91 (1999); *United States v. El Charro Avitia, Inc.*, 7 OCAHO no. 971, 780-81 (1997); *United States v. Zip City Partner, L.P.*, 7 OCAHO no. 965, 711, 713-14 (1997); *Garcia*, 7 OCAHO no. 950 at 470-72; *United States v. MAC Specialties Ltd.*, 6 OCAHO no. 920, 1189, 1195-97 (1997); *A&A Maint.*, 6 OCAHO no. 852 at 268-69; *United States v. Broadcasters Unlimited, Inc.*, 4 OCAHO no. 719, 1127, 1128-29 (1994); *United States v. Carlson*, 1 OCAHO no. 264, 1695, 1698 (1990); *United States v. Covered Bridge Farm Market, Inc.*, 1 OCAHO no. 135, 914, 915-16 (1990); *United States v. DAR Distributing, Inc.*, 1 OCAHO no. 60, 368, 369-70 (1989); *United States v. United Pottery Mfg. and Accessories, Inc.*, 1 OCAHO no. 57, 349, 352-54 (1989). A district court specifically agreed with this proposition years ago, *see United States v. Armory Hotel Assocs.*, 93 B.R. 1, 2 (D. Me. 1988), and the Atkins letter offers no authority to the contrary. The legal issue, in other words, is not one about which there appears to be any legitimate legal dispute.

Considering the factors set out in the case law, the effect of the default in this case would be a delay in its progress for at most about three months, so there appears to be no discernable danger of prejudice to the government from the default. The remaining factors mentioned in *$55,518.05 in U.S. Currency*, 728 F.3d at 195, however, are less favorable to the defaulting parties, inasmuch as they have not even claimed that they have a meritorious defense,[4] and it is obvious that the delay was both entirely avoidable and totally within counsel's control. Looking to the so-called *Pioneer* factors, 507 U.S. at 395, there again appears to be no particular prejudice accruing to the government from the delay, and the length of the delay itself is not sufficient to have any major impact upon the proceedings. Once again, however, the remaining factors do not favor the defaulting parties, inasmuch as the reason for the failure to answer is insubstantial, and the delay was entirely within counsel's control.

The Third Circuit, moreover, has generally not considered an attorney's ignorance of the law to constitute either good cause or excusable neglect. *See, e.g.*, *Amatangelo v. Borough of Donora*, 212 F.3d 776, 779 (3d Cir. 2000) (finding neither good cause nor excusable neglect where an attorney's untimely request for additional time was owing to a mistake of law); *Green v. Humphrey Elevator and Truck Co.*, 816 F.2d 877, 884-85 (3d Cir. 1987) (finding attorney's

[4] As observed in *Kanti v. Patel*, 8 OCAHO no. 1007, 166, 170-73 (1998), the defaulting party need not conclusively establish a meritorious defense, but is obliged to put forward enough facts to create an issue.

"unjustified misunderstanding of the requirements of the law" insufficient to provide good cause); *Andrews v. Time, Inc.*, 690 F. Supp. 362, 364 (E.D. Pa. 1988) (observing that ignorance of the law or of procedural rules is not excusable neglect).

Finally, while there is no suggestion here of bad faith, it is equally difficult to characterize what appears to be a wholly cavalier approach to this forum's rules and case law as good faith. The Atkins letter acknowledges, moreover, that the decision not to file an answer was the result of a deliberate choice, and case law suggests that where an attorney's failure to make a timely filing is not the product of an inadvertent error, but of the attorney's own conscious decision, relief may not be warranted. *In re Bayer*, 527 B.R. 202, 210-11 (Bankr. E.D. Pa. 2015) (noting that there can be no excusable neglect where the attorney's actions represented a conscious choice); *cf. EEOC v. Mike Smith Pontiac GMC, Inc.*, 896 F.2d 524, 529 (11th Cir. 1990) (finding that no relief may be had where there is no meaningful justification for the dilatory conduct that caused the default). The Atkins letter reflects a tactical decision not to file an answer based on a belief that the bankruptcy stay would apply to this matter, but any reasonable inquiry would readily have revealed otherwise, and the letter offers no legal authority to support any good faith basis for such a belief. Where a party is represented by counsel, including specialized bankruptcy counsel, the attorneys are expected either to know the law or at least make some timely attempt to ascertain it.[5]

Few equities favor an attorney whose excuse is ignorance of the law. Considering the totality of the circumstances, the attorney's ignorance of readily ascertainable law simply cannot be characterized as good cause for failing to file an answer. A failure to exercise reasonable diligence coupled with the absence of any meaningful justification for the delay strongly weigh against finding good cause. This is not a case like *Avon Contractors, Inc. v. Secretary of Labor*, 372 F.3d 171, 175 (3d Cir. 2005), in which an innocent attorney did not discover until just before the receptionist quit that she had been losing or destroying the mail. Neither is it a case like *United States v. Jabil Circuit, Inc.*, 10 OCAHO no. 1146, 2-3 (2012), where extraordinary circumstances caused counsel to be away from the office unexpectedly and it was not clear that the order to show cause had actually been received.

Because the explanation in the Atkins letter fails to satisfy the standard for good cause, it is a fortiori insufficient to meet the more rigorous standard for the granting of equitable tolling in this forum, which is generally available only to unrepresented parties, *Soto v. Top Industrial Inc.*, 7 OCAHO no. 999, 1210, 1219-20 (1998), and requires a showing that a timely filing was prevented by extraordinary circumstances beyond the control of the litigant, *Ocana v. El Dorado Stone, LLC*, 11 OCAHO no. 1244, 1 (2015).

[5] On October 20, 2015, this office received a letter from Joseph A. McCormick, Jr., stating that McCormick was the representative for Quickstuff and A&C's Trustee in bankruptcy, that he had not yet had an opportunity to review the complaint, and that he was thus "not in a position to provide [his] interpretation of the effect of 11 U.S.C. § 362 in this matter."

Although there is some suggestion in our case law that clients should not be penalized for the errors or omissions of their attorneys, *see, e.g., United States v. Continental Sports Corp.*, 4 OCAHO no. 640, 455, 456-57 (1994), the Supreme Court emphatically rejected this proposition in *Pioneer*, and explained why clients must be held accountable for the acts and omissions of their attorneys.

> Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney."

507 U.S. at 396-97 (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962) (internal citation omitted)). Quickstuff, Castillo, and A&C will accordingly be held accountable for the acts and omissions of their chosen counsel.

V. CONCLUSION

Notwithstanding a powerful general preference for resolving cases on the merits, that preference cannot be permitted to override the basic legal and procedural requirements of the forum. To find otherwise would be tantamount to licensing counsel to ignore our rules, our case law, and our deadlines with impunity, in the expectation that such omissions will be overlooked.

Based on the totality of the circumstances, I find that Quickstuff, Castillo, and A&C's response to the show cause order failed to show cause why their request for hearing should not be deemed abandoned, and failed to show good cause for not filing an answer. They failed as well to respond to the government's motion for entry of default. These failures have consequences.

ORDER

Construing the Atkins letter as a motion for extension of time in which to file an answer, the motion is denied. The respondents' request for hearing is deemed abandoned pursuant to 28 C.F.R. § 68.37(b)(1), and the complaint is dismissed. ICE's Notice of Intent to Fine accordingly becomes the final agency decision in this matter. The government's motion for entry of default is denied as moot.

SO ORDERED.

Dated and entered this 20th day of November, 2015.

_____
Ellen K. Thomas
Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.