

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner,  
Department of Labor and Industry,  
State of Minnesota,  
Complainant,

**ORDER DENYING  
COMPLAINANT'S MOTION  
FOR DEFAULT JUDGMENT**

vs.

Phoenix Asset Holdings, LLC d/b/a  
Bluewater Services,  
Respondent.

The above-entitled matter is before Administrative Law Judge Jeanne M. Cochran on the Complainant's Motion for Default Judgment (Motion). The Complainant filed its Motion on July 31, 2015. Phoenix Asset Holdings, LLC d/b/a Bluewater Services filed a responsive letter and Answer on August 18, 2015. Oral argument on the Motion was heard via telephone on September 8, 2015. The record on the Motion closed on that date.

Scott A. Grosskreutz, Assistant Attorney General, appeared on behalf of Ken B. Peterson, Commissioner, Department of Labor and Industry (Complainant or Department). Thomas D. Skare, Thos. Skare Law Office, appeared on behalf of Respondent Phoenix Asset Holdings, LLC d/b/a Bluewater Services (Respondent).

**ORDER**

IT IS HEREBY ORDERED that:

1. The Complainant's Motion for Default Judgment is **DENIED**.
2. The contested case hearing will proceed according to the schedule set forth in the Second Prehearing Order issued on September 10, 2015.

Dated: September 17, 2015

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

## MEMORANDUM

### Procedural Background

On June 17, 2015, the Department of Labor and Industry issued a Notice and Order for Hearing and Prehearing Conference (Notice) to Phoenix Asset Holdings, LLC d/b/a Bluewater Services. The Notice informed Respondent that the Department was initiating this action to determine whether Respondent engaged in discriminatory practices in violation of Minn. Stat. §§ 182.654, subs. 9, 11, .669, subd. 1 (2014).<sup>1</sup> Attached to the Notice was a Complaint that outlined the alleged violations of Minnesota law.<sup>2</sup> The Notice provided that: “Respondent shall file with the administrative law judge and serve upon the commissioner, by registered or certified mail, an answer within twenty (20) days after service of the complaint. Any answer to the allegations in the Complaint must be served and filed within twenty (20) days of the date of service.”<sup>3</sup> The Notice also set a prehearing conference in the matter for August 17, 2015, at 9:30 a.m., by telephone.<sup>4</sup>

Respondent did not file an Answer with the Administrative Law Judge with 20 days of service of the Notice and Complaint.<sup>5</sup> Nor did the Respondent contact the Administrative Law Judge prior to the expiration of the 20 day response period.

On July 31, 2015, the Department filed its Notice of Motion and Motion for Default Judgment and a Memorandum of Law in Support of Its Motion for Default Judgment. The Department requested that the Administrative Law Judge find Respondent in default based on its failure to file an Answer within 20 days of service.<sup>6</sup> In support of its position, the Department noted that Minn. Stat. § 182.669 requires Respondent to file “an answer within 20 days after service of the complaint” in proceedings such as this one where the Department has alleged discriminatory conduct by Respondent.<sup>7</sup>

As of the time of the prehearing conference of August 17, 2015 at 9:30 a.m., Respondent had not filed an Answer or a response to the Complainant’s Motion for Default Judgment. However, pursuant to Minn. R. 1400.6600 (2015), Respondent’s time to respond to the Motion had not yet expired.

At the prehearing conference on August 17, 2015, Tom Grover appeared for Respondent. Mr. Grover is Respondent’s General Manager. Mr. Grover requested a continuance of the prehearing conference. Mr. Grover stated that Respondent recently retained outside counsel to handle the matter, and that attorney Thomas Skare was not available for the prehearing conference. Mr. Grover acknowledged that Respondent

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<sup>1</sup> Notice and Order for Hearing and Prehearing Conference at 1 (June 17, 2015); Complaint at ¶¶18-19.

<sup>2</sup> Complaint at ¶¶ 18-22.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Complainant’s Memorandum of Law in Support of Its Motion for Default Judgment (Complainant’s Brief at 1).

<sup>6</sup> Complainant’s Brief at 5, Affidavit of Scott A. Grosskreutz at ¶¶2-3.

<sup>7</sup> Complainant’s Brief at 4; Minn. Stat. § 182.669 (2015).

had not filed an Answer to the Complaint, and asked for additional time to do so now that Respondent had an attorney handling the matter.

The Department opposed Respondent's request for a continuance and noted that Respondent had made no effort to contact the Department or request additional time prior to the August 17, 2015 prehearing conference. The Department asked that the Administrative Law Judge deny the request for a continuance and instead find Respondent in default.

At the August 17, 2015 prehearing conference, the Administrative Law Judge concluded that the Department's Motion for Default Judgment was not yet properly before her because the Respondent's time for filing a response pursuant to Minn. R. 1400.6600 had not yet expired. The Administrative Law Judge permitted the Respondent to file a response to the Motion by the close of business on August 18, 2015.

On August 18, 2015, counsel for Respondent, Thomas Skare, filed a letter responding to the Department's Motion for Default Judgment. In addition, counsel filed an Answer on behalf of Respondent.<sup>8</sup>

In the August 18, 2015 letter, counsel for Respondent requested that the Administrative Law Judge deny the Motion and allow the matter to proceed. Counsel for Respondent asserted that Mr. Grover is not an attorney and did not understand the importance of filing an answer. In addition, Respondent's counsel noted that there are disputed factual issues, and it would be "fair and equitable to allow Phoenix Asset Holdings, LLC to proceed in this matter."<sup>9</sup>

Oral argument on the Motion was held on September 8, 2015 via telephone. During the oral argument, the Department urged the Administrative Law Judge to grant its Motion for Default Judgment because the Respondent failed to file an answer within 20 days of service of the Complaint. Respondent opposed the Department's Motion, arguing that there is no prejudice to the Department from Respondent's delay in filing of the Answer, and the matter should be decided on the merits. At the close of oral argument, the undersigned Administrative Law Judge orally denied the Complainant's Motion for Default Judgment. The analysis below sets forth the reasons for that decision.

## **Analysis**

The Department argues that Respondent should be found in default based on its failure to file its Answer within the 20-day statutory period. Minn. Stat. § 182.669, subd. 1, which governs the filing of the complaint and answer in discrimination matters, provides in relevant part:

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<sup>8</sup> Letter from Thomas Skare to Hon. Jeanne Cochrane (sic) with attached Answer (August 18, 2015).

<sup>9</sup> *Id.*

For purposes of this section, the commissioner shall file with the administrative law judge and serve upon the respondent, by registered or certified mail, a complaint and written notice of hearing. The respondent shall file with the administrative law judge and serve upon the commissioner, by registered or certified mail, an answer within 20 days after service of the complaint.

This statute, however, provides no consequences for failure to file an answer within the 20-day time period.<sup>10</sup>

In addition, the rules of the Office of Administrative Hearings (OAH) do not specify what action the Administrative Law Judge is to take when a party fails to file an answer to a complaint brought pursuant to Minn. Stat. § 182.669 within the time specified by statute.<sup>11</sup> Minn. R. 1400.6600 provides, however, that in ruling on motions where the OAH rules are silent “the judge shall apply the Rules of Civil Procedure for the District Court of Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.”<sup>12</sup> Rule 55.01 of the Minnesota Rules of Civil Procedure specifies that a party is entitled to default judgment when a party against whom affirmative relief is sought fails to plead or otherwise defend its claims.<sup>13</sup> Thus, pursuant to Minn. R. 1400.6600 and Minn. R. Civ. P. 55.01, the Administrative Law Judge may grant a motion for default judgment where a party fails to file an answer within the time period specified in Minn. Stat. § 182.669 if it would “promote a fair and expeditious proceeding.”<sup>14</sup>

In this case, however, the Administrative Law Judge concludes that granting the Complainant’s Motion for Default Judgment would not “promote a fair and expeditious proceeding.” Respondent has now filed an Answer addressing each of the Department’s allegations. In its Answer, Respondent disputes that it engaged in discriminatory practices. Moreover, the Department acknowledged at oral argument that it has not been prejudiced by Respondent’s tardy filing of its Answer. In these circumstances, the Administrative Law Judge concludes that the interests of justice and fairness are better served by deciding the matter on the facts of the case rather than by default judgment. For these reasons, the Complainant’s Motion for Default Judgment is **DENIED**.

**J. M. C.**

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<sup>10</sup> Minn. Stat. § 182.669.

<sup>11</sup> See Minn. R. 1400.5100-.8400 (2015); see also, Complainant's Brief at 4.

<sup>12</sup> Minn. R. 1400.6600.

<sup>13</sup> *Id.*; Minn. R. Civ. P. 55.01.

<sup>14</sup> Minn. R. 1400.6600.