

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Joy Torain,**

Petitioner

22-VH-0064-AG-047

1165679 Oakwood 9249

May 1, 2023

**ORDER OF DISMISSAL**

24 C.F.R. § 26.4 (c)-(d) provides that “If a party refuses or fails to comply with an order of the hearing officer, including an order compelling discovery, the hearing officer may enter any appropriate order necessary to the disposition of the hearing *including a determination against the noncomplying party...*” (Emphasis added).

Petitioner filed a request for hearing on January 3, 2022. While Petitioner’s *Hearing Request* reflected the home address she identified as her own, the record reflects that Petitioner has failed to comply with the Court’s Orders and failed to maintain the recent status of her address of record. All relevant notices and pleadings issued by the Court have since been returned to the Court from the address provided by the Petitioner. It is well-established that the sending of commercially reasonable notice by the lender, and not evidence of receipt of notice, is determinative of the issue of legally sufficient notice. See 31 C.F.R. § 285.11 (c) and (e). According to In re Kenneth Holden, HUDBCA No. 89-3781-K293 (June 6, 1989), “the Office of Hearings and Appeals has held that ‘a Notice of Intent is effective u[p]on dispatch, if properly and reasonably addressed and that actual receipt is not required by the statute’...Further, a Notice of Intent is properly and reasonably addressed if it is sent to Petitioner’s last known address.”

Should the Petitioner’s address change, the onus falls on the Petitioner to notify the Government of such a change of address. See Appeal of: UPCAR Contractors, Inc., HUDBCA No.81-561-C3 (April 21, 1982) (holding that it is the obligation of a party to notify the Board [herein Court] of any change of address so that it can be served with notices and pleadings or to make other appropriate arrangements for expeditious receipt of mail. Failure to do so is at the risk of the party failing to make such arrangements). The Petitioner to date has failed to give notice of any change of address and as a result the current address of record is properly and reasonably considered to be the last known address of the Petitioner. Consequently, the Court has determined that the Petitioner has been sufficiently notified.

Petitioner has also, since January 2022, been ordered to comply with the Court’s *Orders* on January 10, 2022 and May 12, 2022 to file the necessary documentary evidence in support of Petitioner’s position, or otherwise respond to the allegations set forth in the *Secretary’s Statement*,

but Petitioner has failed to do so. As a result, the Court is unable to determine the credibility of the Petitioner's claim in the absence of such evidence.

The *Order for Documentary Evidence* issued to Petitioner on May 12, 2022 by the Court specifically stated, "**Failure to comply with this Order shall result in sanctions being imposed by the Court pursuant to 24 C.F.R. § 26.4 (c), including judgment being entered on behalf of the opposing party or dismissal of this action....**" (Emphasis added). Consistent with the provisions of 24 C.F.R. §§ 26.4 (c), Petitioner's appeal is **DISMISSED** *sua sponte*. Therefore, it is hereby

**ORDERED** that this matter be **DISMISSED WITH PREJUDICE** and the stay of proceeding issued on January 10, 2022 is VACATED.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge