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

January 11, 2024

SOPHIE ACKERMANN, Complainant,	)	
v.	)	8 U.S.C. § 1324b Proceeding OCAHO Case No. 2023B00004
MINDLANCE, INC., Respondent.	)	

Appearances: Sophie Ackermann, pro se Complainant
Kathryne Hemmings Pope, Esq. and Christopher J. Gilligan, Esq., for Respondent

ORDER ON MOTION FOR SANCTIONS AND MOTION TO COMPEL

I. BACKGROUND

This matter arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b. This Order resolves a Motion for Sanctions filed by Complainant on November 30, 2024, and a Motion to Compel filed by Respondent on December 22, 2023.

In an order dated December 4, 2023, this Court found the Motion for Sanctions to have been filed ex parte, disclosed the motion to the opposing party, and provided Respondent with an opportunity to respond to the filing by December 18, 2023. *Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462c, 1–3 (2023).[1] On December 7, 2023, Complainant filed a transcript of a

[1] 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

telephone conversation between the parties in support of the motion. As the substance of the transcript related to Complainant's Motion for Sanctions, the Court considered it as a supplement to that motion and extended the deadline for Respondent to file a response to Complainant's Motion for Sanctions until December 22, 2023. Order on Complainant's Dec. 7, 2023, Filing 1–2.

On December 22, 2023, Respondent filed an Opposition to Complainant's Motion for Sanctions as well as a Motion to Compel. On January 10, 2024, Respondent filed a Supplement to its Opposition to Complainant's Motion for Sanctions.[2]

II. MOTION FOR SANCTIONS

Complainant moves the Court to sanction Attorney Christopher Gilligan of Margolis Edelstein and Attorney George Sommers for allegedly "blackmailing" and "threatening" her during a phone call on November 29, 2023.[3] She attaches an email exchange between the parties setting up the phone call as well as a transcript of a recording of the phone call as support for her motion.

Respondent argues in its opposition that Complainant's Motion procedurally violates Federal Rule of Civil Procedure 11 (Rule 11),[4] violates the OCAHO Settlement Officer Program Policy

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

[2] Although this filing was submitted after the deadline for a response to Complainant's Motion for Sanctions, given that it was filed in response to a rejection notice from the Court directing Respondent on the proper method for filing an audio file, the Court will exercise discretion to accept the filing.

[3] Complainant refers to "George Summers," but based on Respondent's opposition, the correct spelling appears to be "Sommers." Resp't's Opp'n to Mot. for Sanctions 7.

[4] Respondent asserts Rule 11 applies as 28 C.F.R pt. 68 "does not contain express counterparts to Rule 11." Resp't's Opp'n to Mot. for Sanctions 4–5. Respondent argues that Complainant's motion should be denied pursuant to Rule 11(c)(2)'s provision that such motions must not be filed with the court if the "challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service . . . ." *Id.* Respondent argues that this means that any motion for sanctions must be presented to an opposing party twenty-one days before being filed with the Court. *Id.* at 6. However, OCAHO's rules contain a provision regarding sanctions for ethical violations—28 C.F.R. § 68.35(b). OCAHO has previously found that Rule 11, therefore, does not apply in OCAHO proceedings, and OCAHO ALJs therefore do

Memorandum 20-16 regarding confidentiality, and has no coherent factual or legal basis. Resp't's Opp'n Mot. for Sanctions 4. Respondent argues that it is Complainant who should be sanctioned, and attaches an audio recording and transcript of an April 28, 2022, phone conversation between Complainant and a Mindlance employee. *Id.*

"[A]ll persons appearing in proceedings before an [ALJ] are expected to act with integrity, and in an ethical manner." *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416e, 7 (2023) (CAHO order) (quoting 28 C.F.R. § 68.35(a)).[5] OCAHO's sanction authority allows the ALJ to exclude from proceedings parties, witnesses, and their representatives for, among other things, "refusal to adhere to reasonable standards of orderly and ethical conduct" and "failure to act in good faith." 28 C.F.R. § 68.35(b). "OCAHO looks to the ethics rules of the appropriate state bar to determine whether an attorney has committed an ethical violation." *Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416e, at 7. Here, the Court will look to the ethics rules for the state bar of New Jersey, as both attorneys appear to be licensed and located there. *See* Attorney Search, NEW JERSEY COURTS, https://portalattysearch-cloud.njcourts.gov/prweb/PRServletPublicAuth/app/Attorney/-amRUHgepTwWWiiBQpI9_yQNuum4oN16*/!STANDARD?AppName=AttorneySearch (last visited Jan. 3, 2024).

Complainant argues that during the phone call, a lawyer who has not entered an appearance in this matter—George Sommers—got on the phone. Mot. for Sanctions 1.[6] Complainant did not know beforehand that he would be joining the call. *Id.* According to Complainant, he threatened to sue her if she would not drop the case. *Id.* at 1–2.

The transcript of the audio recording of the phone call reflects that Attorney Sommers is an in-house attorney for Respondent. Tr. 1. He informed Complainant that he had listened to the audio recording of a phone call between Complainant and a Mindlance representative, after which Complainant was not selected for the position. *Id.* at 1–2. He said that based on this phone call, he would not have hired Complainant, as she was "rude," "difficult to deal [with]," "disagreeable," and "abrupt," and "adversarial," and that an employer is entitled not to hire someone if they find them disagreeable. *Id.* at 2, 4, 5, 6. Mr. Sommers stated that if Complainant goes forward with this matter, "we're going to retain counsel to sue you because we

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not have the authority to impose monetary penalties as a sanction for misconduct. *See, e.g.*, *Santiglia v. Sun Microsystems, Inc.*, 9 OCAHO no. 1104, 3 (2004). As such, the Court declines to dismiss Complainant's motion on this ground.

[5] OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

[6] When citing Complainant's Motion for Sanctions, the Court will cite to the pagination in a PDF-conversion.

feel - - I certainly feel . . . [you] commenced what we call wrongful civil proceeding, malicious prosecution." *Id.* at 8. If Complainant said any "disparaging remarks" to Bristol Meyers Squibb, "we'll sue you for defamation . . . [w]e'll sue you for tortious interference with our contractual relations with BMS." *Id.* Mr. Sommers said that there were "two paths" ahead if they didn't resolve this matter: either they would "play hard ball" because Complainant's lawsuit is "baseless," or they could "try to rectify whatever problems" she had. *Id.* at 13, 16, 18.

In sum, Complainant appears to request that the Court sanction Attorneys Sommers and Gilligan because: 1) Attorney Sommers has not entered an appearance in this matter but spoke to her on the phone, which she was not warned about beforehand, and 2) Attorney Sommers threatened to file a civil lawsuit against Complainant if she does not drop this suit and referred to her as rude, etc.[7]

As an in-house attorney for Respondent, no ethical rule prohibits Attorney Sommers from speaking to Complainant along with an attorney of record on this case, as long as he informed her that he was not a disinterested party, which he promptly did at the beginning of their phone call by informing her that he was an attorney for Respondent. *See* N.J. RULES OF PRO. CONDUCT R. 4.3 (N.J. Courts 2023); Tr. 1. While New Jersey's Rules of Professional Conduct prohibit threats of criminal charges to obtain an improper advantage in a civil matter, they do not prohibit threats of civil lawsuits. *See* N.J. RULES OF PRO. CONDUCT R. 3.4. The Rules of Professional Conduct do prohibit attorneys from making a "false statement of material fact or law" and from engaging in conduct involving "dishonesty, fraud, deceit or misrepresentation," which could be implicated, for instance, if Attorney Sommers knows his client would not pursue such a suit, or misrepresented the potential strength of these claims to Complainant. N.J. RULES OF PRO. CONDUCT R. 4.1, 8.4. There is no basis for such a conclusion on this record, however. Finally, insofar as Respondent's counsel referred to Complainant as "rude," etc., this was in reference to her behavior during a phone call with a Mindlance representative and the subsequent decision not to hire Complainant to work at Bristol Meyers Squibb, and was therefore relevant to Respondent's argument that Complainant's claims are baseless—rather than a general personal attack on Complainant. *Cf. Lee v. AT&T*, 7 OCAHO no. 924, 1, 12 (1997) (excluding a lay

[7] In her Motion for Sanctions, Complainant discusses the content of conversations between the parties and the settlement officer during settlement negotiations in OCAHO's Settlement Officer Program (SOP). Pursuant to Policy Memorandum 20-16, which was shared with the parties before their referral to SOP, "[n]o evidence regarding statements or conduct in the settlement proceedings . . . shall be admissible in the underlying proceeding . . . except by stipulation of both parties," and proceedings are subject to the confidentiality provisions of 5 U.S.C. § 574, which generally prohibits disclosure of dispute resolution communications by the parties and a settlement officer. As such, Complainant's references to conversations in SOP, and the portions of the transcript of the phone call between the parties which reference conversations in SOP, are stricken, and will not be considered by the Court.

representative for, inter alia, "use of contemptuous and disrespectful language"). While the Court does not condone the heavy-handed tactics used by Respondent's attorneys with a pro se Complainant, the Court is also mindful that "[s]anctions for violating standards of conduct are reserved for particularly egregious litigation misconduct." *Zajradhara v. E-Supply Enters.*, 16 OCAHO no. 1438a, 4 (2022). The Court does not find that the conduct of Attorneys Gilligan or Sommers warrant sanctions.

In its opposition, Respondent argues that Complainant should herself be sanctioned under Rule 11 for bringing a Motion for Sanctions "not based in fact," and because her motion was filed ex parte. Resp't's Opp'n Mot. for Sanctions 10–11. OCAHO's Rules of Practice and Produce apply to "continued use of dilatory tactics" and "refusal to adhere to reasonable standards of orderly and ethical conduct." *Ogrunrinu v. Law Res.*, 13 OCAHO no. 1332c, 2 (2020). The Court does not find that Complainant's Motion for Sanctions meets this standard as she has not filed any other similar motions, and while the Respondent's tactics did not appear, on this record, to be against the rules of professional conduct, they were unsettling to Complainant and unsavory. Further, while the Court may sanction parties for ex parte communications, *see* 28 C.F.R. §§ 68.35(b), 68.36, given Complainant's pro se status, and the fact that this is the only instance of Complainant engaging in ex parte communications, the Court declines to issue sanctions at this time.

III. MOTION TO COMPEL

In its Motion to Compel, Respondent states that on October 20, 2023, it served its First Request for Production of Documents, First Set of Requests for Answers to Interrogatories, and Request for Admissions to Complainant. Mot. Compel 1. Pursuant to the 28 C.F.R. §§ 68.19(b), 68.20(d), and § 68.21(b), answers to interrogatories, responses to requests for production, and responses to requests for admission shall be served within thirty (30) days, unless the ALJ directs otherwise. After receiving no response from Complainant, on December 4, 2023, Respondent sent Complainant a letter "represent[ing] an attempt to resolve this deficiency without judicial involvement." Mot. Compel Ex. B. Respondent requested that Complainant provide a response to its First Request for Production of Documents and First Set of Requests for Answers to Interrogatories within seven days, and told Complainant that pursuant to Federal Rule of Civil Procedure 36(a)(3), its First Set of Requests for Admissions were deemed admitted, given Complainant's non-response. *Id.* According to Respondent, to date, Complainant has not responded to either request. Respondent attaches each of its requests to its Motion to Compel.

An OCAHO Administrative Law Judge (ALJ) may "compel the production of documents" and compel responses to discovery requests, pursuant to 28 C.F.R. §§ 68.23, 68.28. *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016); *see Contreras v. Cavco Indus., Inc.*, 16 OCAHO no. 1440, 2 (2022). A party may file a motion to compel discovery "if the responding

party fails to adequately respond or objects to the request." *United States v. Tuesday Line, Inc.*, 16 OCAHO no. 1425a, 2 (2022) (citing 28 C.F.R. § 68.23(a)).

Pursuant to 28 C.F.R. § 68.23(b), a motion to compel must set forth:

(1) The nature of the questions or request;
(2) The response or objections of the party upon whom the request was served;
(3) Arguments in support of the motion; and
(4) A certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the Administrative Law Judge.

Respondent's Motion to Compel satisfies these requirements. Respondent attaches its discovery requests to the motion, represents that Complainant provided no response to any of its requests, and attaches a letter it sent to Complainant before filing the motion in an attempt to resolve the issue without involving the Court.

As Complainant did not respond to Respondent's requests for admission, they are admitted, and are "conclusively established." 28 C.F.R. § 68.20(b), (d). The Court may consider any properly filed motion for withdrawal or amendment of these admissions. *See id.*

The majority of the remaining discovery requests—requests for production and interrogatory responses—appear to be relevant either to the allegations in the Complaint or to damages, and do not appear overbroad. Further, Complainant has not opposed the Motion to Compel or otherwise opposed the discovery requests.

However, "[s]eparate from a party's burden to lodge a timely objection, the Court has independent authority to decline to compel a party's response to discovery requests." *Contreras*, 16 OCAHO no. 1440, at 3 (citing 28 C.F.R. § 68.23).

Parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding . . . ." 28 C.F.R. § 68.18(b). *See United States v. JR Contractors, Inc.*, 15 OCAHO no. 1406, 2 (2021). In the context of discovery, relevance is broadly construed "to encompass any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case." *See A.S. v. Amazon Web Servs.,* Inc., 14 OCAHO no. 1381l, 4 (2021) (citing *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014)).

Interrogatory Number 6 requests that Complainant respond whether she has "ever been convicted or charged with any crime." OCAHO has held that these types of requests are overbroad, and may involve answers and documents which are irrelevant to these proceedings. *Contreras*, 16 OCAHO no. 1440, at 5. However, "[c]onviction documents related to fraud or deception may

bear on Complainant's credibility or truthfulness in this matter." *Id.* (citing Federal Rule of Evidence 609). Therefore, the Court will narrow this interrogatory. Complainant must answer whether she has been convicted or charged with any crime involving an act of fraud or deception.

Similarly, Respondent requests that Complainant produce "[a]ll documents concerning any lawsuits (including administrative proceedings, arbitrations, and mediations), civil and criminal to which Complainant has been a party . . . ." Req. for Production No. 21. While a party's history of civil litigation may be relevant to a party's claim or defense, again, production of documents related to any criminal proceeding to which Complainant has been a party is overbroad and may result in the production of irrelevant documents. *See Contreras*, 16 OCAHO no. 1440, at 3 (citing *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362a, 6 (2020) (citing Fed. R. Civ. P. 26(b)(1))). Therefore, the Court will narrow this request for production. Complainant must produce all documents concerning any lawsuits (including administrative proceedings, arbitrations, and mediations), civil, or criminal involving an act of fraud or deception, to which Complainant has been a party, including but not limited to, copies of all complaints, pleadings, motions, and court decisions in such lawsuits.

Interrogatory Number 12 seeks all social networking or internet forum Complainant has visited, usernames or pseudonyms she may use, and hyperlinks and screen grabs. This request is not date restricted nor limited to the subject of this lawsuit. To the extent Respondent seeks any statements made by Complainant about the lawsuit, or information related to damages, Respondent sought this information in other Interrogatories. Accordingly Interrogatory Number 12 is overbroad, and Complainant need not respond to this interrogatory.

Complainant must respond to Respondent's discovery requests as modified by this order, by **January 25, 2024.** Complainant is cautioned that failure to respond to Respondent's discovery requests as ordered may result in discovery sanctions. 28 C.F.R. § 68.23(c).

SO ORDERED.

Dated and entered on January 11, 2024.

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Honorable Jean C. King
Chief Administrative Law Judge