

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

February 1, 2024

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
)	8 U.S.C. § 1324a Proceeding
v.)	OCAHO Case No. 2024A00015
)	
ZARCO HOTELS INCORPORATED,)	
Respondent.)	
_____)	

Appearances: Jodie Cohen, Esq., for Complainant
Kian Zarrinnam, pro se Respondent

ORDER SUMMARIZING JANUARY 30, 2024 PREHEARING CONFERENCE

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. § 1324a. Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Zarco Hotels Incorporated, on November 9, 2023.

On December 26, 2023, Respondent filed an Answer and Motion to Dismiss (Failure to State a Claim). On December 28, 2023 Complainant filed an opposition. On January 4, 2024, Respondent filed a “Response to Complainant Motion to Dismiss”; the Court construed this as a reply brief, and exercised its discretion to accept Respondent’s otherwise impermissibly filed submission. *United States v. Zarco Hotels Inc.*, 18 OCAHO no. 1518 (2024).¹

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

On January 30, 2024, the Court held a prehearing conference pursuant to 28 C.F.R. § 68.13.² ACC Jodie Cohen appeared on behalf of Complainant, and Respondent appeared pro se.

The Court first addressed OCAHO's Electronic Filing Pilot Program.³ This Pilot Program allows the parties to send filings and receive orders from the Court electronically. On December 18, 2023, the Court invited the parties to participate in the Pilot Program, and sent the parties Instructions for Filing by Email, a Registration Form and Certification, and instructions for decrypting secure messages—however, neither party returned a completed Registration Form and Certification. The Court informed the parties that it would enclose additional copies of these forms with this order.⁴

The Court next discussed OCAHO's Settlement Officer Program. This program is a no-cost, voluntary dispute resolution program. The settlement discussions are subject to the confidentiality provisions of 5 U.S.C. § 574. If the parties reach a settlement, 28 C.F.R. § 68.14 applies.⁵ Both parties must submit written consent to refer this case to the Program. The parties can ask for a referral to the Program up to 30 days prior to a hearing.

The Court addressed the pending motion to dismiss from Respondent, which was enmeshed with the Answer and included extrinsic evidence. The Court explained that when it considers a motion to dismiss for failure to state a claim (under 28 C.F.R. § 68.10 and Federal Rules of Civil Procedure 12(b)(6)), the Court's review is limited to the allegations in the complaint, and any materials incorporated by reference into or integral to the complaint. *See Ackermann v. Mindlance, Inc.*, 17 OCAHO no. 1462b, 4–5 & n.5 (2023). The Court informed the parties the motion to dismiss would not be converted to one for summary decision,⁶ and the full rationale for this decision would

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

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

³ *See* Office of the Chief Administrative Hearing Officer Electronic Filing Pilot Program, 79 Fed. Reg. 31143 (May 30, 2014), *available at* https://www.justice.gov/eoir/pages/attachments/2015/03/24/79fedreg31143_05-30-2014.pdf; *see also* <https://www.justice.gov/eoir/ocaho-filing>.

⁴ <https://www.justice.gov/sites/default/files/pages/attachments/2015/11/30/registration-form-and-certification.pdf>.

⁵ Further details are available at: <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7> (last accessed June 22, 2023); *see also* EOIR Policy Memorandum 20-16 (<https://www.justice.gov/eoir/page/file/1300746/download>).

⁶ "When matters outside the pleadings are considered, a motion to dismiss may be converted to one for summary decision." *Barone v. Superior Wash & Gasket Corp.*, 10 OCAHO no. 1176, 2

be forthcoming in a written order. The Court felt it prudent to place the parties on notice of this issue, so they could effectively engage in discovery while they await the order on the motion to dismiss. Because the Court will not convert the motion to dismiss, it will exclude from consideration all extrinsic evidence provided by Respondent. Because Respondent is pro se, the Court explained he could renew all merits-based arguments in summary decision and he can provide the evidence to the Court with any motions or responses he files related to the merits of the case.

The Court then provided the parties with an overview of OCAHO practices and procedures, (discovery, motions, burdens),⁷ and available resources on OCAHO's website.

Finally, the Court set a case schedule in this matter:

Discovery Closes: May 29, 2024

Summary Decision Motion deadline:⁸ June 28, 2024

Response to Summary Decision: 30 days after Summary Decision motion filed

Tentative Hearing: Fall 2024

(2013); *see also* Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.").

⁷ Specifically, if the parties choose to engage in discovery, they were encouraged to refer to the provisions regarding discovery at 28 C.F.R. §§ 68.18–23, and case law on the topical index.

A motion for summary decision may be filed by any party at any time before the deadline. *See* 28 C.F.R. § 68.38. The Court informed the pro se Respondent he does not bear the burden, and Complainant must meet its burden. *See United States v. R&SL Inc.*, 13 OCAHO no. 1333a, 29–30 (2020) (discussing the burdens in a case arising under 8 U.S.C. § 1324a).

OCAHO's Rules of Practice and Procedure for Administrative Hearings, available at <https://www.govinfo.gov/content/pkg/CFR-2021-title28-vol2/pdf/CFR-2021-title28-vol2-part68.pdf>; the OCAHO Practice Manual, available at <https://www.justice.gov/eoir/reference-materials/ocaho>; and published decisions available sorted by topic on the topical index, as well as chronologically, both available at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

⁸ Absent a contrary ruling from the Court, all dispositive motions and opposition briefs shall be limited to a maximum of 50 pages. This limitation is exclusive of the cover page, index, table of cases relied upon, and exhibits.

SO ORDERED.

Dated and entered on February 1, 2024.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge