

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

UNITED STATES OF AMERICA,)	
)	
Complainant,)	
)	8 U.S.C. § 1324A Proceeding
v.)	
)	OCAHO Case No. 2023A00046
MARTIN LANDSCAPE MANAGEMENT,)	
INC.,)	
)	
Respondent.)	
_____)	

Appearances: Colin W. Maguire, Esq., and Jodie A. Schwab, Esq., for Complainant
Kevin R. Lashus, Esq., for Respondent

ORDER GRANTING JOINT MOTION TO REFER CASE TO OCAHO
SETTLEMENT OFFICER PROGRAM, REFERRING CASE TO SETTLEMENT
OFFICER PROGRAM, AND DESIGNATING SETTLEMENT OFFICER

I. PROCEDURAL HISTORY

On February 28, 2023, 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) alleging that Respondent, Martin Landscape Management, Inc., violated the employer sanctions provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. On April 28, 2023, Respondent, through counsel, filed a Special Appearance and Answer.

On January 25, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference. Through this Order, the Court scheduled an initial telephonic prehearing conference on February 29, 2024, pursuant to 28 C.F.R. § 68.13.¹ Order Prehr’s Statements & Scheduling Initial

¹ Proceedings in this case will generally be governed by OCAHO’s Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in

Prehr’s Conf. 3. The Court also informed the parties about the OCAHO Settlement Officer Program, a voluntary mediation program through which a Settlement Officer mediates settlement negotiations between the parties as a means of non-binding, alternative dispute resolution. *Id.* at 6. The Court provided the parties with links to the Executive Office for Immigration Review (EOIR) Policy Memorandum 20-16 and Chapter 4.7 of OCAHO’s Practice Manual, both of which describe the policies and procedures for the use of Settlement Officers in OCAHO cases.² *Id.*

On February 29, 2024, the Court conducted the initial telephonic prehearing conference with the parties. During the conference, the Court explained the policies and the procedures of the OCAHO Settlement Officer Program to the parties. Order Memorializing Initial Prehr’s Conf. 2. Both parties’ counsel expressed interest in having the case referred to the Settlement Officer Program for mediation, confirmed their understanding of the program’s polices and procedures, consented to their use, and agreed to a sixty-day referral to a Settlement Officer. *Id.* Although the Court found that the case was appropriate for referral to the Settlement Officer Program, it informed the parties that they must consent to the referral in writing. *Id.* (citing EOIR Policy Mem. 20-16, Section II.A.). Counsel for both parties advised the Court that they intended to file a joint motion requesting referral to the Settlement Officer Program. *Id.*

On March 13, 2024, the parties filed a Joint Motion to Refer Case to OCAHO Settlement Officer Program. In this filing, Complainant’s counsel signed on behalf of Respondent’s counsel with his permission. Joint Mot. Refer Case OCAHO Settlement Officer Prog. 2. The parties explained that, during the initial prehearing conference, the Court “fully informed [the parties] as to the OCAHO Settlement Officer Program, and its requirements” and that they “orally agreed to enter the OCAHO Settlement Officer Program upon referral from this Court.” *Id.*

28 C.F.R. part 68 (2024). OCAHO’s Rules are available on OCAHO’s homepage on the United States Department of Justice’s website. *See* <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

² EOIR Policy Memorandum 20-16 is available at <https://www.justice.gov/eoir/page/file/1300746/download>. Chapter 4.7 of the OCAHO Practice Manual also describes the OCAHO Settlement Officer Program and may be found at <https://www.justice.gov/eoir/eoir-policy-manual/iv/4/7>.

The parties stated that they now “formalize that desire through the Joint Motion” and moved the Court to refer the case for mediation through the program. *Id.*

On March 25, 2024, the parties refiled their Joint Motion to Refer Case to OCAHO Settlement Officer Program. Both parties’ counsel signed the motion. Joint Mot. Refer Case OCAHO Settlement Officer Prog. 2.

II. RULES GOVERNING OCAHO SETTLEMENT OFFICER PROGRAM

OCAHO announced its Settlement Officer Program in August 2020 through EOIR Policy Memorandum 20-16. It is a voluntary program through which the parties use a Settlement Officer to mediate settlement negotiations as a means of alternative dispute resolution. The Settlement Officer convenes and oversees settlement conferences and negotiations, confers with the parties jointly and/or individually, and seeks voluntary resolution of issues. The proceedings before the Settlement Officer are subject to the confidentiality provisions of 5 U.S.C. § 574. The presiding Administrative Law Judge (ALJ) may refer a case for up to sixty days for settlement negotiations before the Settlement Officer. However, with the consent of the parties, the Settlement Officer may seek the approval of the presiding ALJ to extend the period for negotiations for a reasonable amount of time, not to exceed an additional thirty days. If the parties reach a settlement, the provisions of 28 C.F.R. § 68.14 apply. If the parties’ settlement negotiations are unsuccessful, the case is returned to the presiding ALJ to set appropriate procedural deadlines.

The presiding ALJ may refer a case to a Settlement Officer upon: (1) receipt of written confirmation of consent to referral from each party in the case and (2) subject to 5 U.S.C. § 572(b) and the eligibility provisions of the program, a determination by the presiding ALJ that the case is appropriate for referral. EOIR Policy Mem. 20-16, Section II.A. The eligibility provisions include, as relevant, that an ALJ shall not refer a case if (a) either party objects to the referral, (b) one or more parties are proceeding pro se unless the pro se parties are fully informed regarding program’s procedures and consent to their use, or (c) a case is not appropriate for referral. *Id.* Section I.C.

III. DISCUSSION AND ANALYSIS

Pending before the Court is the parties' Joint Motion to Refer Case to OCAHO Settlement Officer Program. The parties move the Court to refer the case to the OCAHO Settlement Officer Program and state that they have been fully informed as to the program's requirements and agree to a referral. Joint Mot. Refer Case OCAHO Settlement Officer Prog. 2. The parties' counsel signed the motion. *Id.*

Through their Joint Motion to Refer Case to OCAHO Settlement Officer Program, both parties have satisfied the OCAHO Settlement Officer Program's requirement that no referral may be made without "receipt of written confirmation of consent to referral from each party in the case." EOIR Policy Mem. 20-16, Section II.A.1. As noted above, the Court has already determined that this case, in which both parties are represented by counsel and have agreed to a referral after being fully informed about the program's procedures and consenting to their use, is appropriate for referral pursuant to EOIR Policy Memorandum 20-16, Sections II.C.1-2. Order Memorializing Prehr's Conf. 2; *see also* OCAHO Practice Manual, Chapter 4.7(a)(4) (March 13, 2023) (discussing the program's eligibility requirements). Moreover, the Court does not find that any of the factors in 5 U.S.C. § 572(b), EOIR Policy Memorandum 20-16, Section I.C.3., and Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual counsel against referral of this case to the program. This finding is based on the Court's review of the pleadings in this matter and its discussions with the parties' counsel during the initial prehearing conference.

Given the Court's findings that this case is appropriate for referral to the OCAHO Settlement Officer Program, and that none of the eligibility factors counsel against referral, the Court now grants the parties' Joint Motion to Refer Case to OCAHO Settlement Officer Program and refers this case to the program for settlement negotiations for sixty days beginning on April 25, 2024, and continuing through June 24, 2024, pursuant to 28 C.F.R. § 68.28(a) and EOIR Policy Memorandum 2016, Sections II.C, II.D.2. The Court designates Administrative Law Judge Andrea R. Carroll-Tipton as the Settlement Officer for this case.

The Court has not yet set a case schedule in this matter, and therefore, no procedural deadlines need to be stayed during the referral period. *See* EOIR Policy Mem. 20-16, Section II.C.

During the referral period, the parties shall comply with the OCAHO Settlement Officer Program's confidentiality requirements, *see* EOIR Policy Mem. 20-16, Section IV, and, as specified in the Policy Memorandum, the statutory provisions of 5 U.S.C. § 574 "which generally prohibit disclosure of dispute

resolution communications by parties and a settlement officer unless a specific enumerated exception applies.” *Id.* Section IV.B.

As the Court explained in the Order Memorializing Initial Prehearing Conference, if the parties reach a settlement agreement through the OCAHO Settlement Officer Program, the Court may issue an order setting deadlines for the filing of any settlement materials. Order Memorializing Prehr’g Conf. 2. The parties may consult 28 C.F.R. § 68.14, which sets forth the two avenues for leaving this forum upon settlement. If the parties enter into a settlement agreement, 28 C.F.R. § 68.14(a)(2) provides that the parties may file a notice of settlement and a joint motion to dismiss. If the parties pursue this avenue, the Court may require the filing of the parties’ settlement agreement. The parties should state in their joint motion whether they are seeking dismissal with or without prejudice.

If the parties do not reach a settlement during the referral to the OCAHO Settlement Officer Program, they may seek an extension of the referral period for up to an additional thirty days. EOIR Policy Mem. 20-16, Section II.D.2. When the referral period ends, the Settlement Officer will terminate negotiations and return the case to the presiding ALJ. *Id.* Section V.B. Settlement negotiations before the Settlement Officer also will be terminated and the case will be returned to the presiding ALJ if a party unambiguously indicates that it does not wish to participate or if the Settlement Officer determines that further negotiations would be unproductive or inappropriate. *Id.* Section V.C.

IV. ORDERS

IT IS SO ORDERED that the Joint Motion to Refer Case to OCAHO Settlement Officer Program filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Martin Landscape Management, Inc., is GRANTED;

IT IS FURTHER ORDERED that, pursuant to EOIR Policy Memorandum 20-16, Section II.C, this case is referred to the OCAHO Settlement Officer Program for settlement negotiations for sixty days beginning on April 25, 2024, and continuing through June 24, 2024;

IT IS FURTHER ORDERED that Administrative Law Judge Andrea R. Carroll-Tipton is designated as the Settlement Officer for this case; and

IT IS FURTHER ORDERED that, should the parties reach a settlement, they shall proceed in accordance with 28 C.F.R. § 68.14.

SO ORDERED.

Dated and entered on April 23, 2024.

Honorable Carol A. Bell
Administrative Law Judge