

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

US TECH WORKERS ET AL.,)	
Complainant,)	
)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2024B00041
)	
CALAMOS INVESTMENTS,)	
Respondent.)	
)	

Appearances: John M. Miano, Esq., for Complainant
Eric S. Bord, Esq. Eric L. Mackie, Esq., and Hannah Fisher, Esq. for Respondent

ORDER CANCELLING PREHEARING
CONFERENCE AND ISSUING A STAY OF DISCOVERY

I. PROCEDURAL HISTORY

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, US Tech Workers, filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 9, 2024, alleging that Respondent, Calamos Investments, discriminated against it on the basis of citizenship status in violation of 8 U.S.C. 1324b(a)(1). Respondent filed its Answer on April 29, 2024; it filed its Motion to Dismiss on the same day.

On May 9, 2024, the Court issued an Order Scheduling Prehearing Conference and General Litigation Order. The Court set a date for an initial telephonic prehearing conference on July 3, 2024 at 2:00 pm Eastern Time. Gen. Lit. Order 1-2.

On May 13, 2024, Complainant filed a Motion to Consolidate and for Leave to File a Consolidated Amended Complaint, seeking leave to consolidate this matter with 40 other related cases pending before this Court. Complainant filed a response to Respondent's Motion to Dismiss on May 14, 2024. Respondent filed a Reply Brief in Support of its Motion to Dismiss Complaint for Failure to State a Claim or, in the Alternative, Motion to Stay on June 7, 2024.

After receiving an extension, Respondent filed its Motion in Opposition to Complainant's Motion to Consolidate and for Leave to File a Consolidated Amended Complaint on June 18, 2024.

II. ORDER CANCELLING PREHEARING CONFERENCE AND STAYING DISCOVERY

In light of the pending Motion to Consolidate and Motion to Dismiss, the Court finds it would be prudent to cancel the prehearing conference in this matter.¹

The Court also finds that it would serve judicial economy and efficiency to issue a stay of discovery pending adjudication of the Motion to Consolidation, as the motion poses a bar to the Court's ability to set an appropriate case schedule in this matter at a prehearing conference.

Respondent's Motion to Dismiss is potentially case dispositive. This Court has previously found good cause to stay discovery pending adjudication of a case dispositive motion. *See, e.g., Talebinejad v. Mass. Inst. Tech.*, 17 OCAHO no. 1464c, 3 (2023) ("[T]he pendency of the Motion to Dismiss constitutes good cause to stay proceedings, including discovery, until the Court issues a ruling on the pending Motion to Dismiss."); *US Tech Workers v. Fifth Third Bank*, 19 OCAHO no. 1550, 3 (2024) (finding stay of proceedings would be in interest of judicial economy given pendency of motion to dismiss).

"The OCAHO Rules vest the Administrative Law Judge (ALJ) with all appropriate powers necessary to regulate the proceedings." *Heath v. Amazee Glob. Ventures, Inc.*, 16 OCAHO no. 1433, 2 (2022) (citing *Hsieh v. PMC-Sierra, Inc.*, 9 OCAHO no. 1091, 5 (2003))²;

¹ The prehearing conference in this matter was initially scheduled for July 3, 2024. Due to the delays inherent with sending a mail copy of the Court's order, as a courtesy to the parties the Court staff advised the parties via email in late June of the pendency of this Order vacating the prehearing conference. To the extent the parties would like to decrease the delays associated with mail filings, the Court encourages the parties to register for the OCAHO e-filing program. Both parties must file submissions consenting to entry into the program. The parties may access the e-filing registration form via the U.S. Department of Justice's website, at: <https://www.justice.gov/sites/default/files/pages/attachments//2015/11/30/registration-form-and-certification.pdf>

² 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 database "FIMOCAHO," or in the LexisNexis database "OCAHO," or on the website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

28 C.F.R. § 68.28(a). This includes the power to issue stays of proceedings. United States v. Black Belt Sec. & Investigations, 17 OCAHO no. 1456b, 2 (2023) (citing Hsieh, 9 OCAHO no. 1091, at 5). The issuance of a stay “calls for the exercise of judgment, which must weigh competing interests and maintains an even balance,” and “should not be granted absent a clear bar to moving ahead.” See Heath v. ConsultAdd, 15 OCAHO no. 1395b, 2 (2022) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936), and then quoting Monda v. Staryhab, Inc., 8 OCAHO no. 1002, 86, 91 (1998)).

Therefore, discovery in this matter is STAYED pending adjudication of Complainant’s Consolidation Motion. The Court also cancels the prehearing conference previously scheduled in this matter.

SO ORDERED.

Dated and entered on July 17, 2024.

John A. Henderson
Administrative Law Judge