

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

February 25, 2025

UNITED STATES OF AMERICA,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2024A00057
)	
G-NET CONSTRUCTION CORP.,)	
Respondent.)	
)	

Appearances: Nancy Torrellas, Esq., for Complainant
 Robert Fileccia, Esq., for Respondent

ORDER GRANTING COMPLAINANT'S MOTION TO WITHDRAW THE COMPLAINT

I. BACKGROUND

This case arises under the employer sanctions provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324a. Complainant, the U.S. Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on March 5, 2024. Complainant alleges that Respondent violated 8 U.S.C. § 1324a(a)(1)(B). On April 19, 2024, Respondent filed an answer.

On February 5, 2025, following an extension of the discovery period, Complainant filed a Motion to Withdraw the Complaint, stating that “[a]fter the conclusion of discovery and upon further review of [the] case Complainant has decided to no longer pursue a fine in this matter and respectfully moves to withdraw the complaint filed on March 5, 2024.” Mot. Withdraw 1. The motion did not indicate Respondent’s position on the withdrawal of the Complaint and Respondent did not file a response.

II. LEGAL STANDARDS

OCAHO’s Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024),¹ do not directly address voluntary dismissal upon motion from the Complainant. *United States v. La Parisienne Bakery*,

¹ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2024). The rules are also available through OCAHO’s webpage on the United States Department of Justice’s website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

LLC, 15 OCAHO no. 1390a, 2 (2021).² OCAHO's Administrative Law Judges, instead, look to the Federal Rules of Civil Procedure, which OCAHO may use "as a general guideline in any situation not provided for or controlled by" OCAHO's Rules, "the Administrative Procedure Act, or by any other applicable statute, executive order, or regulation." 28 C.F.R. § 68.1. Federal Rule of Civil Procedure 41(a)(1) allows voluntary dismissal of a complaint without a court order where the complainant dismisses the complaint before an answer or motion for summary judgment are filed, or where the parties submit a jointly signed stipulation of dismissal. Federal Rule of Civil Procedure 41(a)(2) allows courts to dismiss a complaint that plaintiffs request by court order, "on terms that the court considers proper."

"Under OCAHO case law, '[i]t has been consistently recognized that the Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless the opposing party will suffer some plain legal prejudice as a result.'" *Sinha v. Infosys Ltd.*, 14 OCAHO no. 1373f, 3 (2024) (quoting *A.S. v. Amazon Web Servs.*, 14 OCAHO no. 1381p, 2 (2024)). "'Legal prejudice' is prejudice to some legal interest, some legal claim, or some legal argument." *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citing *Zajradhara v. Changxing Corp.*, 14 OCAHO no. 1356, 1 (2020)). "[T]he threat of future litigation does not constitute plain legal prejudice." *Id.* In the jurisdiction of the Second Circuit Court of Appeals, the jurisdiction where this case arises, the Courts also consider "that the test for dismissal without prejudice involves consideration of various factors, known as the *Zagano* factors." *Camilli v. Grimes*, 436 F.3d 120, 123 (2d Cir. 2006) (citing *Zagano v. Fordham University*, 900 F.2d 12, 14 (2d Cir. 1990)).³ The *Zagano* factors include: (1) plaintiff's diligence in bringing a motion to dismiss; (2) any undue vexatiousness on plaintiff's part; (3) the extent to which the suit has progressed, including defendant's effort and expense in preparation for trial; (4) the duplicative expense of relitigation; and (5) the adequacy of plaintiff's explanation for the need to dismiss. *Zagano*, 900 F.2d at 14.

A dismissal under Rule 41(a)(2) is without prejudice unless the Court orders otherwise. This Court "has broad discretionary power over whether to grant a motion for voluntary dismissal, with or without prejudice, pursuant to Rule 41(a)(2)." *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3. A dismissal with prejudice means that "a subsequent complaint between the same parties involving the same or substantially similar issues . . . is typically barred by *res judicata*." *US Tech Workers v. Slalom, Inc.*, 21 OCAHO no. 1617, 6 n. 3 (2024) (CAHO Order).

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>.

³ Since the allegations at issue in this case occurred in New York State, the Court may look to the case law of the relevant United States Court of Appeals, here the Second Circuit. See 28 C.F.R. § 68.57.

III. ANALYSIS

Given that an answer has been filed by Respondent and that the Motion to Withdraw the Complaint is not a joint stipulation filed by both parties, the Court considers it under Rule 41(a)(2). The statement by Complainant that it wishes to withdraw the Complaint after reviewing the case is the only information provided by Complainant. Respondent filed an answer, which included a number of affirmative defenses, but did not file any counterclaims.

Reviewing the factors, this Court has not been made aware of any plain legal prejudice, and while dismissal without prejudice may raise the threat of future litigation, OCAHO case law recognizes that this threat alone does not constitute legal prejudice. *See La Parisienne Baker, LLC*, 15 OCAHO no. 1390a at 3.

In terms of the *Zagano* factors, the first and fifth factors weigh against Complainant. “A plaintiff is often considered sufficiently diligent in moving for a voluntary dismissal so long as the motion was made before discovery begins in earnest.” *Stinson v. City U. of New York*, 18-CV-5963, 2020 WL 2133368, at *4 (S.D.N.Y. May 4, 2020) (quoting *Sec. Exch. Comm'n v. One or More Unknown Purchasers of Sec. of Telvent GIT*, No. 11-CV-3794, 2013 WL 1683665, at *2 (S.D.N.Y. Apr. 17, 2013)); but see *Hinfin Realty Corp. v. Pittson Co.*, 206 F.R.D. 350, 355 (2d Cir. 2002) (finding that plaintiffs “were diligent in bringing their motion to dismiss the action without prejudice because they filed it immediately after the events that led to their decision not to pursue the action at this time” although the parties had engaged in discovery). Here, Complainant waited until after discovery was completed to file the motion, thus this factor weighs against dismissal to some extent. As to the fifth factor, Complainant’s explanation consisted of one, conclusory sentence.

The remaining factors are either neutral or favor dismissal: the Court has no evidence of vexatious conduct on the part of Complainant. As to factor three, “the standard for concluding that a suit has progressed far enough to weigh against dismissal is high, and is usually satisfied only where substantial discovery, summary judgment motion practice, or trial preparation has occurred.” *Am. Fed'n of State, Cty. & Mun. Employees Dist. Council 37 Health & Sec. Plan v. Pfizer, Inc.*, No. 12 CIV. 2237, 2013 WL 2391713, at *4 (S.D.N.Y. June 3, 2013); see also *Hinfin Realty Corp.*, 206 F.R.D. at 356 (finding the third factor neutral where the case had been ongoing for 21 months “but little action [was] taken” by the parties prior to the request to dismiss). This case has been in progress for nearly a year, but the delay is primarily due to Respondent, who sought an extension of time to conduct discovery because of a personal matter. *See United States v. G-Net Constr. Corp.*, 21 OCAHO no. 1625a (2024). According to the brief sentence provided by Complainant, discovery had concluded but the record does not reflect the extent of the discovery. Complainant filed a motion for summary decision, but Respondent has not responded to the motion, and the case was not in a pre-trial posture. While Respondent incurred costs to defend this Complaint, Respondent has not sought to quantify or explain the extent of the costs. Further, should Complainant bring the case again, the Court does not anticipate significant duplicative expense at this juncture as Respondent did not engage in substantive motions practice. Ultimately, the record does not compel a conclusion that there was substantial prejudice to Respondent such that dismissal without prejudice would not be appropriate.

Complainant's Motion to Withdraw the Complaint is GRANTED. The case is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on February 25, 2025.

Honorable Jean C. King
Chief Administrative Law Judge

Appeal Information

This order shall become the final agency order unless modified, vacated, or remanded by the Chief Administrative Hearing Officer (CAHO) or the Attorney General.

Provisions governing administrative reviews by the CAHO are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Note in particular that a request for administrative review must be filed with the CAHO within ten (10) days of the date of this order, pursuant to 28 C.F.R. § 68.54(a)(1).

Provisions governing the Attorney General's review of this order, or any CAHO order modifying or vacating this order, are set forth at 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. pt. 68. Within thirty (30) days of the entry of a final order by the CAHO, or within sixty (60) days of the entry of an Administrative Law Judge's final order if the CAHO does not modify or vacate such order, the Attorney General may direct the CAHO to refer any final order to the Attorney General for review, pursuant to 28 C.F.R. § 68.55.

A petition to review the final agency order may be filed in the United States Court of Appeals for the appropriate circuit within forty-five (45) days after the date of the final agency order pursuant to 8 U.S.C. § 1324a(e)(8) and 28 C.F.R. § 68.56.