

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

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a. 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 8 U.S.C. § 1324a(a)(1)(B).

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF) it served on Respondent on January 19, 2023. Compl. Ex. A. Through the NIF, Complainant notified Respondent that it was seeking a fine for the above-referenced allegations totaling \$146,281.95. *Id.* By letter dated February 16, 2023, Respondent, through counsel, requested a hearing before this Court (request for hearing). *Id.* Ex. B. On April 28, 2023, Respondent filed a Special Appearance and Answer.

On January 25, 2024, the Court issued an Order for Prehearing Statements and Scheduling Initial Prehearing Conference, through which it set an initial telephonic prehearing conference with the parties for February 29, 2024, pursuant to 28 C.F.R. § 68.13.¹ Order Prehr’g Statements & Scheduling Initial Prehr’g Conf. 3. In this Order, the Court also informed the parties about the OCAHO Settlement Officer Program,² a voluntary 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 conducted the initial telephonic prehearing conference with the parties as scheduled on February 29, 2024. During the prehearing conference, the Court explained the OCAHO Settlement Officer Program and its governing policies and procedures. Order Memorializing Initial Prehr’g Conf. 2. The parties expressed interest in a referral to the OCAHO Settlement Officer Program for mediation, confirmed their understanding of the program’s policies and procedures, consented to their use, and agreed to an initial sixty-day referral to a Settlement Officer. *Id.*

On March 13, 2024, the parties filed a Joint Motion to Refer Case to OCAHO Settlement Officer Program in accordance with the requirements of EOIR Policy Memorandum 20-16. *See* Policy Memorandum 20-16, Section II.A. (Aug. 3, 2020) (providing for referral upon “written confirmation of consent” from the parties). In their joint motion, the parties explained that, during the prehearing conference, the Court “fully informed [the parties] as to the OCAHO Settlement Officer Program, and its requirements,” and they “orally agreed to enter the OCAHO Settlement Officer Program upon referral from this Court.” *Id.* 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.*

The Court granted the parties’ Joint Motion on April 23, 2024, through an Order Granting Joint Motion to Refer Case to OCAHO Settlement Officer Program, Referring Case to Settlement Officer Program, and Designating Settlement Officer.

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 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 sets forth the OCAHO Settlement Officer Program and is available at <https://www.justice.gov/eoir/page/file/1300746/download>. *See also* Chapter 4.7 of the OCAHO Practice Manual available at <https://www.justice.gov/eoir/reference-materials/ocaho/chapter-4/7>.

United States v. Martin Landscape Mgmt., Inc., 19 OCAHO no. 1551 (2024).³ The Court found that the parties satisfied the requirements for a referral to the OCAHO Settlement Officer Program, the matter was appropriate for referral, and none of the factors in 5 U.S.C. § 572(b), EOIR Policy Memorandum 20-16, Section I.C.3, or Chapter 4.7(a)(4)(C) of the OCAHO Practice Manual counseled against referral. *Id.* at 4 (citing Pol’y Memo. 20-16, Secs. II.A.1, II.C.1-2; and then citing Order Memorializing Prehr’s Conf. 2). Given these findings, the Court granted the parties’ Joint Motion, designated a Settlement Officer, and referred this matter to the OCAHO Settlement Officer Program for a period of sixty days, beginning on April 25, 2024, and continuing through June 24, 2024. *Id.* Should the parties reach a settlement agreement, the Court told them to consult 28 C.F.R. § 68.14 which sets forth the two avenues for leaving the forum. *Id.* at 5. If they did not reach a settlement during the referral period and would like to continue their settlement negotiations, the Court informed the parties that they could seek an extension of the referral period. *Id.*

The Settlement Officer in this matter informed the Court on June 24, 2024, that the parties were close to finalizing a settlement agreement and therefore would not be seeking an extension of the Settlement Officer Program referral period.

On August 29, 2024, the Court issued an Order for Joint Status Report. *United States v. Martin Landscape Mgmt., Inc.*, 19 OCAHO no. 1551a (2024). The Court ordered the parties, within fifteen days of the date of the order, to file a joint status report or, if they had reached a settlement, the Court instructed the parties to proceed in accordance with 28 C.F.R. § 68.14. *Id.* at 4.

On September 12, 2024, the parties filed a Notice of Settlement and Joint Motion to Dismiss in which the parties stated that they had “reached a full settlement of this case and are in agreement to dismiss the action.” Notice of Settlement & Joint Mot. Dismiss 2. Pursuant to 28 C.F.R. § 68.14(a)(2), they moved the Court to dismiss

³ 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 after 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 through the Westlaw database “FIM-OCAHO,” the LexisNexis database “OCAHO,” and on the United States Department of Justice’s website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

this case. *Id.* The parties attached their settlement agreement to their joint motion. *Id.* Tab A.

II. LEGAL STANDARDS AND DISCUSSION

Pending before the Court is the parties' Notice of Settlement and Joint Motion to Dismiss pursuant to 28 C.F.R. § 68.14(a)(2). For the reasons set forth herein, the Court grants the joint motion and approves dismissal of this case.

Under OCAHO's Rules of Practice and Procedure for Administrative Hearings, there are two avenues for leaving the forum when the parties have entered into a settlement agreement. *See* 28 C.F.R. § 68.14. The parties either may submit consent findings or a filing seeking dismissal. *Id.* § 68.14(a). Here, the parties have filed a Notice of Settlement and Joint Motion to Dismiss pursuant to 28 C.F.R. § 68.14(a)(2). That regulation requires the parties to notify the Administrative Law Judge (ALJ) that they "have reached a full settlement and have agreed to dismissal of the action." *Id.* § 68.14(a)(2). The presiding ALJ may require the parties to file their settlement agreement and must approve dismissal of the action. *Id.*

The Court has reviewed the parties' Notice of Settlement and Joint Motion to Dismiss and finds that the parties have complied with the requirements of 28 C.F.R. § 68.14(a)(2). In their notice and motion, which was signed by counsel for both parties, the parties explain that they "have reached a full settlement and are in agreement to dismiss the action" pursuant to 28 C.F.R. § 68.14(a)(2). Notice of Settlement & Joint Mot. Dismiss 2-3. The parties however did not indicate whether they seek dismissal with or without prejudice as instructed by the Court. *See Martin Landscape Mgmt., Inc.*, 19 OCAHO no. 1551, at 5 ("The parties should state in their joint motion whether they are seeking dismissal with or without prejudice."); *see also Martin Landscape Mgmt., Inc.*, 19 OCAHO no. 1551a, at 4 n.4 ("The parties should indicate in any such motion whether they are seeking dismissal with or without prejudice.").

The Court looks to OCAHO's Rules of Practice and Procedure for Administrative Hearings, but "28 C.F.R. § 68.14(a)(2) is silent as to whether the dismissal should be with or without prejudice." *United States v. RGV Best Burger, Inc.*, 18 OCAHO no. 1492, 3 (2023). The Court is guided instead by case precedent which provides that, "when the parties fail to indicate whether they seek dismissal with or without prejudice, the matter is left to the sound discretion of the trial court." *United States v. Chinese Back Rub*, 17 OCAHO no. 1452, 2 (2022) (citing *Tingling v. City of Richmond, Va.*, 13 OCAHO no. 1324e, 2 (2021); *Brooks v. Anthem, Inc.*, 14 OCAHO no. 1351, 2 (2020)). In making this determination, OCAHO ALJs have looked to the [dismissal] motion itself and to other circumstantial evidence, including

any “statements or conduct indicative of [the parties’] preference.” *Chinese Back Rub*, 17 OCAHO no. 1452, at 2.

The Court finds that the parties’ intent is for a dismissal with prejudice. The Court bases its finding on its review of the filings in this case, including the parties’ Notice of Settlement and Joint Motion to Dismiss and their settlement agreement. *See United States v. Torres Mexican Food, Inc.*, 4 OCAHO no. 596, 88, 89 (1994) (explaining that 28 C.F.R. § 68.14(a)(2) neither requires nor precludes Administrative Law Judges from reviewing parties’ settlement agreements). These filings shed light on the parties’ intent and reflect a full and final resolution of the issues in this case. In the Notice of Settlement and Joint Motion to Dismiss, the parties state that they had reached a “full settlement of this case.” Notice of Settlement & Joint Mot. Dismiss 2. The parties’ settlement agreement, which bears the signatures of both parties and their counsel, reflects a final resolution of all four counts in the complaint in this matter. *Id.* Tab A. In relevant part, the settlement agreement states that “the Complaint, the allegations contained therein, and the supporting exhibits, are incorporated in the Agreement as though fully set forth.” *Id.* ¶ 2. The settlement agreement reflects that Respondent has admitted to “the charges contained in Counts I and II and demur[red] to Counts III and IV, as set forth in the Complaint.” *Id.* ¶ 6. Respondent also has agreed to pay a specific civil money penalty for the admitted violations. *Id.* ¶ 4. The agreement further provides for the withdrawal of Respondent’s request for hearing before this Court and the waiver of its right to a hearing before an ALJ. *Id.* ¶ 5.

The Court therefore finds that the parties seek a dismissal with prejudice and a dismissal with prejudice is appropriate because it will bring finality to this litigation and the allegations the government has raised against Respondent. *See, e.g., Chinese Back Rub*, 17 OCAHO no. 1452, at 2 (finding dismissal with prejudice appropriate where parties’ settlement agreement reflected a desire for a final resolution).

Given the Court’s findings that the parties have sought dismissal in conformity with 28 C.F.R. § 68.14(a)(2) and that dismissal with prejudice is appropriate, the Court now grants the parties’ Notice of Settlement and Joint Motion to Dismiss and dismisses this case with prejudice.

III. ORDERS

Upon consideration of the Notice of Settlement and Joint Motion to Dismiss filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, and Respondent, Martin Landscape Management, Inc., and pursuant to 28 C.F.R. § 68.14(a)(2),

IT IS SO ORDERED that the parties' Notice of Settlement and Joint Motion to Dismiss is GRANTED; and

IT IS FURTHER ORDERED that this case is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on September 23, 2024.

Honorable Carol A. Bell
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.