

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. 2024A00026
TEXAS EXCEL PROPERTY	)	
MANAGEMENT SERVICES CORP.,	)	
	)	
Respondent.	)	
	)	

Appearances: Colin Maguire, Esq., for Complainant
Texas Excel Property Management Services Corp., Respondent¹

FINAL ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This case arises under the employer sanctions provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On December 19, 2023, 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, Texas Excel Property Management Services Corporation, failed to prepare and/or present the Employment Eligibility Verification Form (Form I-9) at the time of hire, or in a timely manner, for four individuals, in violation of 8 U.S.C. § 1324a(a)(1)(B). Compl. ¶ 5.

¹ Complainant's counsel has identified Mr. Ahmet R. Kalkan as Respondent's registered agent and director, and Katie Santmyer, Esq., as Respondent's counsel. Although Ms. Santmyer told OCAHO that she is representing Respondent, she did not file a notice of appearance in this case as required by 28 C.F.R. § 68.33(f). To ensure receipt, OCAHO staff shall serve this Order on the Respondent business through Mr. Kalkan at the Spring, Texas, address, and Ms. Santmyer at both Houston, Texas, addresses she has provided to the Court.

Complainant attached to the complaint the Notice of Intent to Fine Pursuant to Section 274A of the INA (NIF), it personally served on Respondent through Mr. Ahmet Kalkah at an address in Spring, Texas, on May 1, 2023, seeking a fine of \$59,460 for alleged violations of 8 U.S.C. § 1324a(a)(1)(B) for failure to prepare and presented the Form I-9 for thirty individuals identified in the NIF's attachment. Compl. Ex. A. The NIF put Respondent on notice of the need to request a hearing before an Administrative Law Judge (ALJ) "within 30 days from the service of this [NIF]." ² Compl. Ex. A.

Complainant also attached two emails to the complaint: (a) an email dated June 12, 2023, from Mr. Fercan E. Kalkan³ denying the allegations in the NIF but seeking to cooperate and (b) the government auditor's email dated November 29, 2023, in which the auditor indicated that the government was prepared to file a complaint with OCAHO. Compl. Ex. B.

Finally, Complainant attached to the complaint a request that OCAHO serve the complaint on Mr. Ahmet R. Kalkan at the address in Spring, Texas, listed in the NIF. Compl. Attach. (citing 28 C.F.R. § 68.7.).⁴ Complainant did not attach to the complaint a request for a hearing before OCAHO by Respondent ("request for hearing").⁵

On January 11, 2024, using the United States Postal Service's certified mail, the Chief Administrative Hearing Officer (CAHO) sent Respondent—via Mr. Ahmet R. Kalkan—a Notice of Case Assignment for Complaint Alleging Unlawful Employment (NOCA), the complaint, the NIF, and the parties' emails (together, the "Complaint package"). Through the NOCA, the CAHO directed Respondent to

² 8 U.S.C. § 1324a(e)(3)(A) specifies that the government, before imposing an order for violations, "shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation."

³ Mr. Fercan E. Kalkan's relationship to the Respondent business and its registered agent and director, Mr. Ahmet R. Kalkan, is unclear.

⁴ These proceedings are governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings. OCAHO's Rules are available on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

⁵ 28 C.F.R. § 68.7(b)(3) explains that a request for hearing must accompany a complaint brought pursuant to 8 U.S.C. § 1324a.

answer the complaint within thirty days in accordance with 28 C.F.R. § 68.9(a). Notice of Case Assignment ¶ 4.

The Complaint package, however, was not delivered to Respondent. The USPS tracking information indicated that the Complaint package had been “in transit to the next facility” since January 26, 2024. OCAHO also never received a signed USPS Domestic Return Receipt Form (PS Form 3811) (“return receipt”) which would have confirmed delivery.

On February 13, 2024, using the USPS certified mail, OCAHO again mailed the Complaint package to Respondent, along with a cover letter describing the delivery difficulties. A copy was provided to Complainant. Once again, however, OCAHO did not receive the USPS proof of service of the Complaint package on Respondent. Rather, the USPS certified mail tracking service indicated the Complaint package had been “in transit to the next facility” since February 20, 2024. OCAHO also did not receive a return receipt for the Complaint package.

On March 1, 2024, after having reviewed the cover letter detailing the delivery issues, Complainant’s counsel emailed OCAHO staff. He copied on his email Mr. Kalkan and an attorney named Katie Santmyer who was using an email address ending in “excelapts.com.” In the email, Complainant’s counsel represented that, on February 7, 2024, he had provided Respondent with the complaint and NOCA. He also represented that he had provided Respondent with OCAHO’s cover letter. Complainant’s counsel did not specify the manner of service. He also inquired as to the availability of electronic filing.

On March 8, 2024, Ms. Santmyer responded to the email and copied OCAHO and Complainant’s counsel on her response. She attached to her email a document entitled Respondent’s Original Answer and requested to participate in electronic filing.

On March 18, 2024, OCAHO staff replied to the email and asked Respondent to confirm whether it received the Complaint package from OCAHO. If it did not receive the Complaint package, OCAHO staff instructed Respondent to provide OCAHO with its best mailing address and point of contact for service. OCAHO staff explained to Ms. Santmyer that, if she intended to represent Respondent in this matter, she must file a notice of appearance that comports with 28 C.F.R. § 68.33(f). Further, OCAHO staff rejected Respondent’s Original Answer and directed Respondent to file the answer by one of the means set forth in 28 C.F.R. § 68.6. OCAHO staff also provided the parties with information about OCAHO’s Electronic Filing Pilot Program and explained that OCAHO would invite the parties to register for electronic filing after receipt of Respondent’s answer to the complaint. On the same day, Ms. Santmyer responded via email and said she would ask Mr. Kalkan if he received the Complaint package.

On March 22, 2024, Ms. Santmyer submitted Respondent's Original Answer to OCAHO by mail without filing a notice of appearance as Respondent's counsel.

On April 8, 2024, OCAHO staff spoke with Ms. Santmyer by telephone. During that conversation, Ms. Santmyer stated that she was the best point of contact for Respondent and that, although Mr. Kalkan did not recall receiving the Complaint package, he would check his records. Ms. Santmyer provided OCAHO with an updated mailing address for Respondent in Houston, Texas, but said that mail service to the business address could be unreliable.

On April 9, 2024, using the USPS certified mail, OCAHO mailed the Complaint package to Respondent using the updated mailing address. The Complaint package was returned to OCAHO as being undeliverable.

On April 25, 2024, and May 9, 2024, using the USPS certified mail, OCAHO mailed the Complaint package to Respondent using Ms. Santmyer's address in Houston, Texas. The USPS certified mail tracking tool indicated that the Complaint package mailed on April 25, 2024, was deemed "Unclaimed/Being Returned to Sender," on June 8, 2024. The USPS certified mail tracking information for the Complaint package sent on May 9, 2024, was last updated on May 21, 2024, at which point it was "in transit to the next facility." OCAHO did not receive a return receipt for either package.

On April 30, 2024, Complainant's counsel emailed OCAHO and requested to participate in electronic filing. On May 2, 2024, OCAHO staff provided the parties with Attorney/Participant Registration Forms and Certifications to use to register for OCAHO's Electronic Filing Pilot Program. OCAHO staff, however, explained that the case could not be enrolled in electronic filing until Respondent's counsel confirmed receipt of the Complaint package from OCAHO.

On June 16, 2025, the Court issued an Order to File Respondent's Request for Hearing and Granting Complainant Leave to Amend Complaint. *United States v. Tex. Excel Property Mgmt. Servs. Corp.*, 21 OCAHO no. 1667 (2025).⁶ The Court

⁶ 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 in the Westlaw database "FIM-OCAHO," the LexisNexis database "OCAHO," or on the United States Department of

explained that OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024), specify that a complaint "shall be accompanied by a copy of the [NIF] and Request for Hearing." *Id.* at 4 (quoting 28 C.F.R. § 68.7(c)). The Court then found that Respondent's June 12, 2023, email to Complainant was not a timely request for hearing and afforded Complainant and Respondent thirty days to file a copy of Respondent's request for hearing. *Id.* at 4–5. Without the request for hearing, the Court explained that "OCAHO jurisdiction cannot be triggered, and a respondent is not entitled to a hearing." *Id.* at 4 (quoting *United States v. A&D Maint.*, 19 OCAHO no. 1568a, 5 (2024)). After describing a variance in the number of violations alleged in Count I of the complaint and the attached NIF, the Court afforded Complainant thirty days to file an amended complaint to satisfy the pleading requirements of 28 C.F.R. § 68.7(b)(3). *Id.* at 5.

On July 1, 2025, the Court issued an Order Directing Complainant to Serve Complaint. *United States v. Tex. Excel Property Mgmt. Servs. Corp.*, 21 OCAHO no. 1667a (2025). Through the Order, the Court directed Complainant to personally serve Respondent with a copy of the Complaint package by August 15, 2025, in a manner that complied with 28 C.F.R. § 68.3(a)(1). *Id.* at 6–7. The Court also ordered Complainant to file with the Court proof of service within five days of effectuating service. *Id.* at 6–8. In its filing, the Court instructed Complainant to provide the name and title of the individual served, the individual's relationship to Respondent, the date upon which service was effectuated, and a functional mailing address for Respondent. *Id.* If it could not effectuate service, the Court directed Complainant to notify the Court of its efforts to serve Respondent no later than thirty-five days from the date of the Order. *Id.* at 7–8. It also provided that Complainant could move to dismiss the complaint without prejudice. *Id.*

On July 16, 2025, Complainant filed an Amended Complaint Regarding Unlawful Employment and Response to the Court's Order. Through the filing, Complainant "acknowledge[d] that it has not identified additional written evidence of a challenge to the [NIF] or request for a hearing before this Court to offer in response to the Court's Order." Resp. 2. Complainant added that "[i]f the Court ultimately finds that the available evidence does not vest the Court with jurisdiction, then the Department will file a motion to dismiss this matter or welcome[s] the Court's *sua sponte* order to do the same." *Id.*

On August 6, 2025, Complainant filed Complainant's Response to the Court's Order and Motion to Dismiss Without Prejudice. Through the motion, Complainant

Justice's website at <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

affirmed that it had served the amended complaint on Respondent via Mr. Ahmet Kalkan at the address in Spring, Texas, and Ms. Santmyer at both of her Houston, Texas, addresses. Mot. Dismiss 2. It also attached evidence demonstrating that service was accomplished via Federal Express priority overnight delivery. Mot. Dismiss Exs. A–B. Additionally, one of Complainant’s agents attempted to serve Mr. Kalkan personally with the complaint at the same address on July 22, 2025. Mot. Dismiss 2. Complainant attached a Report of Investigation dated July 23, 2025, that corroborated this failed attempt. Mot. Dismiss Ex. C. Complainant noted that it “had not received any responsive filings from the Respondent relating to the Court’s Order dated June 16, 2025.” Mot. Dismiss 2. As a result, “[b]ased on the Court’s prior Order dated June 16, 2025, plus the Court’s legal analysis and the lack of filings from the Respondent, the Department takes the position that DHS may issue a final order pursuant to 8 U.S.C. §§ 1324a(e)(4)–(6).” *Id.* “Therefore, the Department moves to dismiss its Complaint and Amended Complaint without prejudice.” *Id.* Respondent did not file a response to the Court’s Order dated July 16, 2025, or Complainant’s Motion to Dismiss Without Prejudice. Respondent has not otherwise communicated with the Court.

II. LEGAL STANDARDS AND ANALYSIS

Pending before the Court is Complainant’s Response to the Court’s Order and Motion to Dismiss Without Prejudice through which Complainant seeks to dismiss the complaint and amended complaint filed in this case without prejudice. Mot. Dismiss 2. For the reasons set forth below, the Court grants Complainant’s motion to dismiss.

OCAHO’s Rules of Practice and Procedure for Administrative Hearings do not provide a standard for adjudicating motions by a complainant seeking to voluntarily dismiss a complaint. OCAHO’s Rules do provide that the Federal Rules of Civil Procedure may be used “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. Here, the Court looks to Federal Rule of Civil Procedure 41 which “provides two avenues for voluntary dismissal of a case.” *United States v. Space Expl. Techs. Corp.*, 18 OCAHO no. 1499b, 4 (2025).

Federal Rule of Civil Procedure 41(a)(1) provides that a plaintiff may dismiss an action without a court order by filing “(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Here, Complainant has not submitted a notice before an answer was filed, or a stipulation of dismissal signed by both parties. Rather, Complainant has filed a motion to dismiss requesting that the Court dismiss the case against Respondent. This motion was met with silence by

Respondent which failed to file a response with the Court. Given the nature of Complainant's filing, the Court is guided by Rule 41(a)(2) which states that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Rule 41(a)(2) requires the Court to decide (a) whether to permit the dismissal, (b) whether the dismissal should be with or without prejudice, and (c) what terms and conditions, if any, should be imposed. The Court likewise consults case law from the United States Court of Appeals for the Fifth Circuit as it is the "appropriate circuit for review." 28 C.F.R. § 68.56.

When considering whether to permit a voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2), the Court also looks to case precedent. This Court and federal courts have held that "[c]ourts should grant voluntary dismissals unless 'the non-moving party will suffer some plain legal prejudice.'" *United States v. Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, 3 (2023) (quoting *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002)). "Plain legal prejudice may arise 'when a party proposes to dismiss the case at a late stage of pretrial proceedings, or seeks to avoid an imminent adverse ruling, or may on refiling deprive the defendant of a limitations defense.'" *Id.* (quoting *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 628 F.3d 157, 162 (5th Cir. 2010)).

Here, Respondent has not argued that it will suffer any plain legal prejudice from dismissal, and the Court finds none. *See Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 4–5 (granting dismissal without prejudice where the respondent did not argue that she would suffer plain legal prejudice). Indeed, the parties have been unable to show that Respondent made the timely, written request for hearing on the NIF required by statute and regulation to vest this Court with jurisdiction and entitle Respondent to a hearing. *See* 8 U.S.C. § 1324a(e)(3)(A); 8 C.F.R. § 274a.9(e); *see also* 28 C.F.R. § 68.7(b)(3) (explaining that a request for hearing must accompany a complaint brought pursuant to 8 U.S.C. § 1324a). In making this finding, the Court has considered not only the record in this case, but the early stage of these proceedings, the opportunity Respondent has had to make its position known to the Court, and the lack of any stated opposition to Complainant's motion. *See Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, at 2 (finding no prejudice from dismissal where the case was in its initial pleadings stage and the respondent had only filed an answer); *Hussain v. Amazon Web Servs., Inc.*, 17 OCAHO no. 1453, 2 (2022) (granting request for voluntary dismissal and noting that the respondent had "an opportunity to be heard, [but] provided no position on the propriety of dismissal"). Therefore, the Court grants the voluntary dismissal sought through Complainant's Motion to Dismiss Without Prejudice.

Having permitted the voluntary dismissal, the Court next considers the appropriateness of dismissal with or without prejudice. Complainant requests dismissal without prejudice. Mot. Dismiss 2. A dismissal without prejudice allows a complainant "to refile a complaint as if it had never been filed." *United States v. RGV*

Best Burger, Inc., 18 OCAHO no. 1492, 3 (2023) (citing 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2367 (4th ed. 2023) (an order dismissing without prejudice “permits the initiation of a second action[.]”). In contrast, a dismissal with prejudice has res judicata and collateral estoppel consequences and bars “another prosecution based on identical facts.” *Id.* (citations omitted).

Under Federal Rule of Civil Procedure 41(a)(2), unless the order states otherwise, a dismissal is without prejudice, and both OCAHO and Fifth Circuit case law have recognized a court’s “broad discretionary power” over whether to dismiss a complaint under Rule 41(a)(2) with or without prejudice. *Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 4 (citing *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3; and then citing *Rivera v. PNS Stores, Inc.*, 647 F.3d 188, 195 (5th Cir. 2011)). In determining whether to dismiss a complaint with or without prejudice in the context of a voluntary dismissal, OCAHO ALJs have considered factors such as the stage of the proceedings and the resulting prejudice to the respondent from dismissal. *See, e.g., Johnny & Leona Ent., LLC*, 13 OCAHO no. 1325, at 2; *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3.

Given Complainant’s representations in its motion, the record before the Court, the early stage of these proceedings, Respondent’s failure to identify any prejudice or unfair effects from a dismissal without prejudice, and the fact that “the threat of future litigation does not constitute plain legal prejudice,” *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (citations omitted), the Court exercises its discretion and finds that a dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(2) is appropriate here. *See Zajradhara v. CL Corp.*, 16 OCAHO no. 1429a, 3 (2022) (finding “no indication that [r]espondent will suffer plain legal prejudice from dismissal without prejudice” where it did not provide a response to the motion); *La Parisienne Bakery, LLC*, 15 OCAHO no. 1390a, at 3 (granting voluntary dismissal where the respondent did not file a response opposing the motion and there did not appear to be any prejudice or unfair effects).

Lastly, Federal Rule of Civil Procedure 41(a)(2) permits a court ordering a dismissal to include any additional terms it “considers proper.” “Terms may concern the payment of costs and attorneys’ fees or seek to reduce the inconvenience to any party opposing the dismissal by requiring the production of documents or witnesses.” *Diega Quisquina-Yaxon*, 17 OCAHO no. 1474a, at 3 (citing *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 603 (5th Cir. 1976)). The Court declines to impose any supplemental terms or conditions on this dismissal. Respondent has not sought any payments, documents, or testimony, and the Court finds no curative conditions are necessary.

Accordingly, the Court grants Complainant's Motion to Dismiss Without Prejudice and, pursuant to Federal Rule of Civil Procedure 41(a)(2), dismisses without prejudice the complaint and amended complaint filed in this matter.

III. ORDERS

IT IS SO ORDERED that the Motion to Dismiss Without Prejudice filed by Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, is GRANTED; and

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 41(a)(2), the complaint and amended complaint in this case, namely OCAHO Case No. 2024A00026, are DISMISSED without prejudice.

SO ORDERED.

Dated and entered on September 30, 2025.

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.