

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

June 6, 2019

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| UNITED STATES OF AMERICA, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324a Proceeding |
| |) | OCAHO Case No. 15A00073 |
| |) | |
| FRIMMEL MANAGEMENT, LLC d/b/a |) | |
| UNCLE SAM’S, |) | |
| Respondent. |) | |
| _____ |) | |

ORDER DISMISSING COMPLAINT WITH PREJUDICE

This action arises under 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. Complainant filed a Motion to Dismiss Complaint on Remand, notifying the Court that it does not intend to continue to prosecute this action. Such a filing would ordinarily call for an immediate dismissal pursuant to 28 C.F.R. § 68.14(a)(2); however, Complainant did not specify whether it seeks a dismissal with or without prejudice, and Respondent opposes the dismissal if it is without prejudice.

A dismissal without prejudice leaves the parties as if no action had been brought at all and Complainant can reinstitute the matter by filing a new complaint. *Mangir v. TRW, Inc.*, 4 OCAHO no. 672, 722, 725-26 (1994). Conversely, a dismissal with prejudice is equivalent to a decision on the merits and it has both res judicata and collateral estoppel consequences. *See Huesca v. Rojas Bakery*, 4 OCAHO no. 654, 550, 557, 560 (1994). Such a dismissal bars forever any further proceedings based on the identical facts. *United States v. G.L.C. Rest., Inc.*, 3 OCAHO no. 439, 459, 466 (1992).

It appears that the parties intend to dispose of this matter with finality since Complainant seeks a dismissal because it no longer has evidence to prove its case and Respondent seeks a dismissal with prejudice indicating it may file a motion seeking attorney’s fees. Accordingly, on May 14, 2019, the Court issued a Notice of Intent to Dismiss with Prejudice notifying the parties that the Court would dismiss the complaint **with** prejudice, unless a party opposed the dismissal within ten (10) days of the issuance of the order.

Nothing further having been heard from the parties, the complaint is dismissed **with** prejudice.

SO ORDERED.

Dated June 6, 2019.

Thomas P. McCarthy
Administrative Law Judge