

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

May 8, 2020

ZAJI OBATALA ZAJRADHARA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00047
)	
CHANGXING CORPORATION,)	
Respondent.)	
_____)	

ORDER OF DISMISSAL

This case arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b. Complainant, Zaji Obatala Zajradahara, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on February 23, 2020, *pro se*, alleging that Respondent, Changxing Corporation, discriminated against him based on his citizenship status and national origin in violation of § 1324b.

This office sent a Notice of Case Assignment for Complaint Alleging Unfair Immigration-Related Employment Practices and a copy of the complaint to Respondent on February 27, 2020 via certified U.S. mail. The Notice of Case Assignment directed that the proceedings would be governed by Department of Justice regulations.¹ Respondent filed its answer on April 17, 2020.

On the same day, April 17, 2020, Complainant filed a Motion for Dismissal. In the motion, the Complainant states only that “Pursuant to Rule 41(a)(1)(A)(i) of the *Federal Rules of Civil Procedure*, Complainant, ZAJI O. ZAJRADHARA, and or their counsel of record, hereby give notice that the above-entitled action is voluntarily dismissed, with prejudice against Defendant(s) CHANGXING CORPORATION.” Mot. Dismiss.

The OCAHO rules “explicitly provide for dismissal of complaints under three circumstances: (1) ‘[w]here the parties or their authorized representatives or their counsel have entered into a settlement agreement’ (28 C.F.R. § 68.14); (2) when a complaint or a request for hearing is abandoned by the party or parties who filed it (28 C.F.R. § 68.37(b)); (3) by default (28 C.F.R. § 68.37(c)).” *LeEdwards v. Kumagai Int’l USA Corp.*, 4 OCAHO no. 609, 197, 200 (1994).

¹ Rules of Practice and Procedure, 28 C.F.R. pt. 68.

The OCAHO rules do not specifically cover a voluntary dismissal by the complainant, but the Federal Rules of Civil Procedure (FRCP) may be used as a general guideline for any situation not covered by the OCAHO rules, the Administrative Procedure Act, any other applicable statute, executive order, or regulation. 28 C.F.R. § 68.1.

Under FRCP 41(a)(1)(A)(i), a complainant may dismiss an action without a court order by filing a notice of dismissal before the opposing party files an answer. FRCP 41(a)(2), on the other hand, provides that the Court may order dismissal of an action at the plaintiff's request. "Such an order is proper only if a plaintiff has made a motion for dismissal." *LeEdwards*, 4 OCAHO no. 609 at 200. The Court "should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a [respondent] can show that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice is "prejudice to some legal interest, some legal claim, [or] some legal argument." *Id.* (internal quotation marks and citation omitted). "Uncertainty because a dispute remains unresolved" or "the threat of future litigation which causes uncertainty" does not constitute plain legal prejudice. *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir. 1996); see *United States v. Johnny & Leona Entertainment, LLC*, 13 OCAHO no. 1325, 12 (2019).

Respondent's Answer reflects that it was placed in the U.S. mail on April 6, 2020 in Saipan. It appears likely that Complainant received the Answer in Saipan before he filed his Dismissal, which was dated April 17, 2020 and was sent via email. In any event, OCAHO received the Answer and the Motion for Dismissal on the same day. Accordingly, the Court will construe the dismissal as a motion pursuant to FRCP 41(a)(2).

The case is in an early stage and no motions or prehearing statements have been filed. Respondent did not respond to the motion, and there does not otherwise appear to be any prejudice to Respondent in the dismissal. Accordingly, the Court will order the case dismissed pursuant to FRCP 41(a)(2).

FRCP 41(a)(2) states that unless the dismissal order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice. OCAHO has explained that Rule 41(a)(2) "allows the Court to dismiss with or without prejudice, with the most important consideration being the interests of the defendant." *Mangir v. TRW, Inc.*, 4 OCAHO no. 672, 722, 725 (1994). "If the plaintiff moves under Rule 41(a)(2) for voluntary dismissal and specifies that he or she wishes dismissal with prejudice, . . . the court must grant that wish." *Id.* If the complainant moves for a dismissal without prejudice or does not specify that it be with or without prejudice, the matter is left to the sound discretion of the court. *Id.*

Complainant's *pro se* motion seeks a dismissal *with prejudice to the respondent*. A dismissal with prejudice "has the effect of a final adjudication on the merits favorable to [the respondent]" and bars the complainant from bringing the same cause of action in a future suit. *Id.* at 726. (citation omitted). A dismissal with prejudice "is res judicata not only as to matters actually

litigated in the previous action, but as to all relevant issues which could have been but were not raised and litigated in the suit.” *Id.* (citation omitted).

Complainant is *pro se*, and it is not clear to the Court what Complainant intends as Respondent did not file any counterclaims. Nonetheless, the Court may not speculate as to Complainant’s intentions since he explicitly requests a dismissal with prejudice, citing to FRCP 41(a)(1). Further, as Complainant did not seek a dismissal without prejudice, Respondent has not had an opportunity to oppose or respond to a dismissal without prejudice. As such, Complainant’s Motion for Dismissal is GRANTED. The Complaint is DISMISSED WITH PREJUDICE.

SO ORDERED.

Dated and entered on May 8, 2020.

Jean C. King
Chief Administrative Law Judge