

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2022B00034
SMART WORKS, LLC,)	
Respondent.)	
)	

ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Smart Works LLC. Complainant alleges that Respondent discriminated against him on account of his citizenship status and national origin, and engaged in unfair immigration-related documentary practices in violation of § 1324b. Respondent filed an answer on April 21, 2022.

On May 19, 2022, the Court issued an Order Staying Proceedings. Heath v. Smart Works, LLC, 16 OCAHO no. 1434, 1 (2022).¹ In the May 19, 2022 Order, the Court disclosed communications Complainant sent to the Court concerning a health emergency. The Court also issued a 60-day stay of proceedings. Id. at 1–2.

On August 4, 2022, the Court issued a Notice and Order. Heath v. Smart Works, LLC, 16 OCAHO no. 1434a, 1 (2022). In the August 4, 2022 Notice and Order, the Court provided notice of Complainant’s apparent death. *See id.* at 1–2 (citing Heath v. Ancile, Inc., 15 OCAHO no. 1411a, 1 (2022)). The Court invited the parties to advise or object to the Court taking judicial notice of Complainant’s apparent death within 30 days. Id. at 2; *see* 28 C.F.R. § 68.41.² The Court

¹ 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 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,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2022).

further invited the parties to file submissions concerning the applicability of Federal Rule of Civil Procedure 25 (Rule 25) to these proceedings within the same timeframe. Id.

On March 13, 2023, the Court issued an Order. In the March 13, 2023, Order, the Court discussed Respondent's statement noting the death of Robert Heath, filed on September 1, 2022, and its notice regarding service of process of Tonya Heath (Mr. Heath's apparent executor) on October 5, 2022. *See* Mar. 13, 2023, Order ¶ 2, 4 (stating that it personally served Ms. Heath with the statement noting death on September 24, 2022). Upon review of Respondent's filings, the Court found that Complainant was deceased. Id. at 3.

The Court also found Rule 25 as applicable to these proceedings.³ Id. at 2 (citing Heath v. Ancile, Inc., 15 OCAHO no. 1411b, 2–3 (2022)). The Court noted that per Rule 25, service of a statement noting death typically triggers the 90-day window for filing motions for substitution. Id. at 3 (citing Fed. R. Civ. P. 25(a)(1)). Even so, the Court observed that Respondent had personally served Ms. Heath with the statement noting Complainant's death before the Court decided that Rule 25 would apply in this case.⁴ Id. at 3–4. The Court then provided:

Insofar as the Court intends to take official notice of Ms. Heath as executor in this matter, the Court should, in fairness, provide explicit notice to her that it intends to do so . . . Ms. Heath may, within 21 days from the issuance of [the March 13, 2023] Order, file a submission affirming, denying, or qualifying in some manner her role as Mr. Heath's executor. Should the Court receive no response within that timeframe, the Court will take official notice of Ms. Heath as Mr. Heath's executor. [. . .] [T]he Court declines to begin the 90-day period proscribed by Rule 25 until Ms. Heath is advised as her designation as the executor . . . and until 21 days within which she might object, or otherwise qualify the designation, has elapsed.

Id. at 3–4.

The Court did not receive filings in response to the March 13, 2023 Order. Thus, the Court will take official notice of Tonya Heath as Complainant's executor pursuant to 28 C.F.R. § 68.41. The Court further observes that service of the March 13, 2023 Order was perfected on Ms. Heath via certified mail. *See also* Fed. R. Civ. P. 25(a)(3). Neither party has moved for dismissal based

³ In the March 13, 2023 Order, the Court declined to sua sponte decide whether Complainant's death extinguished his claims, pursuant to Rule 25(a)(1). Mar. 13, 2023 Order ¶ 3, n.5 (“[T]he Court is loathe to sua sponte rule on a potentially contentious matter in which the parties have neither sought the Court's assistance nor provided briefing.”).

⁴ This finding moots the basis for Respondent's January 13, 2023 motion to dismiss. *See* Mot. Dismiss 1 (citing Fed. R. Civ. P. 25(a)(1)) (arguing that the 90-day period for filing motions for substitution began on the date that Respondent served Ms. Heath the statement noting death).

on an argument that the claims in this action have been extinguished with Mr. Heath's passing. Again, the Court declines to sua sponte raise this matter.

The Court now starts the 90-day period proscribed by Rule 25(a)(1). "A motion for substitution may be made by any party or by the decedent's successor or representative." Fed. R. Civ. P. 25(a)(1). If a motion for substitution is not made within 90 days from the date of this Order, this action by Robert Heath (OCAHO Case No. 2022B00034) may be subject to dismissal without prejudice. *See id.*

SO ORDERED.

Dated and entered on May 9, 2023.

Honorable John A. Henderson
Administrative Law Judge