

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

June 14, 2023

ROBERT PAUL HEATH,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2022B00001
)	
SPRINGSHINE CONSULTING AND)	
ANONYMOUS EMPLOYER,)	
Respondent.)	
_____)	

Appearances: Robert Heath, pro se Complainant
Stephen Madoni, Esq., and Christina Bateman, Esq., for Respondent

NOTICE AND ORDER

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 11, 2021, Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Complainant alleges that Respondent, Springshine Consulting and Anonymous Employer (Springshine), discriminated against him because of his citizenship status and national origin, and engaged in unfair immigration-related documentary practices, in violation of § 1324b. On December 6, 2021, Respondent, through counsel, filed its answer. On February 16, 2022, Complainant filed his prehearing statement. On March 11, 2022, Respondent filed its prehearing statement.

On April 12, 2022, the Court issued an Order Canceling Prehearing Conference, ordering Complainant to file a status report within sixty days, and inviting Respondent to file any response it “deem[ed] appropriate.” *See Heath v. Springshine Consulting*, 16 OCAHO no. 1421, 1 (2022).¹

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

On July 13, 2022, the Court issued an Order to Show Cause for Status Report. *See Heath v. Springshine Consulting*, 16 OCAHO no. 1421a, 1 (2022).

On August 5, 2022, Respondent filed its status report. Respondent states that the parties executed a settlement agreement on May 17, 2022, and attached the agreement, as well as a number of emails reflecting that Respondent provided a sum in satisfaction of the settlement agreement to Complainant. Status Report 1, Ex. A, B. As part of the settlement agreement, Complainant was to file for dismissal. *Id.* Complainant did not file for dismissal. Status Report 1. Respondent represents that it was informed of Complainant's death by a Florida probate attorney on June 17, 2023. *Id.* As found below, Complainant passed away on May 18, 2022, and while emails reflect that an attorney helping the Complainant and Complainant's daughter, Ms. Tonya Heath, directed Respondent as to where to send the payment shortly after Complainant's death, they did not inform Respondent of his passing. Status Report Ex. B.

On October 26, 2022, the Court issued an Order seeking input from the parties on how to resolve the case, given that Complainant had not responded to the Court's recent orders and neither party had moved for dismissal. *See* Oct. 26, 2022 Order ¶ 2. The Court then provided notice to the parties of its intent to take official notice of Complainant's death, subject to 28 C.F.R. § 68.41.² *See id.* at 2–3 (citing *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a (2022) (permitting the parties to comment or object within thirty days)). The Court further invited the parties to file submissions on the applicability of Federal Rule of Civil Procedure 25 (Rule 25) within the same timeframe. *Id.* at 3. Lastly, the Court provided notice of its intent to take official notice of Ms. Heath as Complainant's executor, and added her to the certificate of service. *See id.* at 3–4 (citations omitted) (allowing the parties to comment or object within fourteen days).

On November 4, 2022, Respondent filed a response to the October 26, 2022, Order. Respondent states that it does not object to the Court taking official notice that Mr. Heath is deceased, or that Ms. Heath is his executor. Resp. 1. Respondent then argues that Rule 25 does not apply because Complainant's "claims are extinguished already." *See id.* According to Respondent, Complainant signed the settlement agreement before he died, and Complainant received money in consideration of the settlement extinguishing his OCAHO claims. *See* Resp. 1 (citing in part Rule 25(a)(1)). Finally, Respondent "recommends this matter be dismissed pursuant to 28 C.F.R. § 68.37(b)." *Id.*

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 (2023).

II. OFFICIAL NOTICE

Recently, this Court took official notice of the death certificate for Mr. Heath after providing notice to the parties. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418c, 3–5 (2022) (quoting *Heath v. Ancile*, 15 OCAHO no. 1411b, 2–3 (2022) (“Whether under the broader concept of official notice [28 C.F.R. § 68.41] or under the circumscribed evidentiary rule 201 judicial notice, [Mr. Heath’s] death certificate meets that standard[.]”). This Court then found that Mr. Heath died on May 18, 2022. *Id.* at 3.

For the reasons stated in *Heath v. Euclid Innovations*, this Court takes official notice of the fact that Complainant Mr. Robert Heath died on May 18, 2022.

This Court also recently found that Palm Beach County probate records³ were proper foundation from which to take official notice that Ms. Heath is Complainant’s executor. *See Heath v. Euclid Innovations*, 16 OCAHO no. 1418d, 2 (2023) (citing in part Fed. R. Evid. 201(b)). In this case, no one has objected to the Court taking official notice of this fact, nor argued that it is an improper subject of official notice. *See* Resp. 1. Therefore, the Court takes official notice of the fact that Ms. Tonya Heath is Complainant’s executor.⁴

III. SETTLEMENT AGREEMENT

When parties execute a valid settlement agreement, OCAHO’s rules provide two ways to seek dismissal of the action. 28 C.F.R. § 68.14. Parties may file consent findings, *see* § 68.14(a)(1), or a notice of settlement, *see* § 68.14(a)(2). The notice of settlement requires that the parties notify the [ALJ] that they “have reached a full settlement and have agreed to dismissal of the action.” § 68.14(a)(2). *E.g.*, *Violante v. Giant Food Co.*, 17 OCAHO no. 1458, 1 (2022). OCAHO’s regulations do not strictly prescribe how the parties provide the notice. *See United States v. Cal. Mantel, Inc.*, 10 OCAHO no. 1168, 7 (2013) (stating that “[n]o particular format is prescribed” for the notification); *e.g.*, *Tovar v. United States Postal Serv.*, 4 OCAHO no. 650, 524, 526 (1994) (finding that the parties’ submitted settlement agreement included an “inferred joint motion to dismiss,” and dismissed the matter pursuant to 28 C.F.R. § 68.14). Dismissal pursuant to a notice of settlement is also “subject to the approval of the [ALJ.]” § 68.14(a)(2); *see Jackai v. Frito-Lay*,

³ The probate records are available at *eCaseView*, CLERK OF THE CIRCUIT COURT & COMPTROLLER PALM BEACH CTY., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited May 26, 2023).

⁴ The Court also finds that Ms. Heath has notice of these proceedings, as she was served the Court’s October 26, 2022, Order. *Supra* Part I.

Inc., 1 OCAHO no. 188, 1232, 1232–33 (1990) (reasoning that the ALJ has “some discretion in approving a dismissal” pursuant to settlement).

Respondent presents a settlement agreement. Status Report Ex. A. When Complainant signed the settlement agreement on May 17, 2022, *see* Status Report Ex. A at 6, he was presumptively capable of contracting and providing consent. *See Algo-Heyres v. Oxnard Manor LP*, 88 Cal. App.5th 1064, 1070 (2023), *citing* CA Prob. Code, § 810, subd. (a); *Wilson v. Sampson*, 91 Cal.App.2d 453, 459 (1949).⁵ The parties bargained on a lawful object—the release of claims by Complainant against Respondent in exchange for a sum of money.⁶ *See* Status Report Ex. A. While Respondent signed the agreement after Complainant had already passed away, the parties had a meeting of the minds, thus the contract was formed, regardless of whether the written instrument was valid. *See Cal. Mantel, Inc.*, 10 OCAHO no. 1168, at 11 (“[T]he fact that the parties intend to adopt a subsequent written document to memorialize an agreement does not prevent the formation of a contract.”) (citing Restatement (Second) of Contracts § 17 (1981)). The record reflects that Respondent performed its part of the bargain, Status Report Ex. B. Respondent has not challenged the settlement agreement, nor filed an action seeking enforcement of any of the terms.

“Public policy favors the enforceability of settlement agreements and the concomitant avoidance of litigation.” *Id.* at 8 (citing *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989)). The record supports that the parties reached a full settlement and intended to seek dismissal of the action. Although neither Complainant, his executor, nor a successor in interest have advised the Court regarding the settlement agreement, Respondent sought dismissal, albeit on other grounds, and provided the settlement agreement.⁷

⁵ As a settlement agreement is a contract, state law generally governs its construction and enforcement. *O’Neil v. Bunge Corp.*, 365 F.3d 820, 822 (9th Cir. 2004) (citation omitted); *see, e.g., S. v. Neiman Marcus Grp.*, 13 OCAHO no. 1323, 4 (2019) (citations omitted). In this case, California law governs the settlement agreement at issue. *See* Status Report, Ex. A at 5 ¶ E.19 (noting that the settlement was entered into in California, and expressly designating that California state law controls).

⁶ “Under California law, the essential elements for a contract are (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration.” *U.S. ex rel. Oliver v. Parsons Co.*, 195 F.3d 457, 467 (9th Cir. 1999) (citing Cal. Civ. Code § 1550, and then citing *Marshall & Co. v. Weisel*, 242 Cal. App. 2d 191, 51 (1996)).

⁷ Dismissal under 28 C.F.R. § 68.37(b) is inappropriate where a party is deceased (a fact now established here by way of official notice) given the notice issues. In ordinary course, Rule 25 covers dismissal based on a party’s death. However, Respondent has persuasively argued claims extinguishment due to the settlement agreement, rendering a Rule 25 dismissal unavailable.

Under the circumstances, this Court finds that dismissal under 28 C.F.R. § 68.14(a)(2) is the appropriate disposition. *See Tovar*, 6 OCAHO no. 450 at 526. Still, the Court is mindful that a dismissal pursuant to § 68.14(a)(2) is a final case disposition. Accordingly, the Court provides notice that this case appears dismissible based on a notice of settlement, pursuant to § 68.14(a)(2). Complainant's executor, Ms. Heath, may advise or comment on the settlement agreement within fourteen days from the date of this Order. If Ms. Heath provides a submission, Respondent may file a reply within fourteen days from the date it receives that filing.

IV. CONCLUSION

The Court takes official notice, pursuant to 28 C.F.R. § 68.41, that Complainant Mr. Robert Heath is deceased, and that Ms. Tonya Heath is his personal representative.

The Court finds that Mr. Heath signed a valid settlement agreement on May 17, 2022, which included express terms as to the release of the claims in this case. The Court provides notice that this case appears dismissible based on a notice of settlement, pursuant to 28 C.F.R. § 68.14(a)(2).

The Court permits Ms. Heath fourteen days from the date of issuance of this Order to provide any written response related to the settlement agreement she deems appropriate. If Ms. Heath provides a written response, the Court permits Respondent fourteen days to reply.

SO ORDERED.

Dated and entered on June 14, 2023

Honorable Jean C. King
Chief Administrative Law Judge