

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

August 15, 2019

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324a Proceeding
)	OCAHO Case No. 19A00022
)	
JOHNNY & LEONA ENTERTAINMENT, LLC)	
D/B/A ROCKIN CIGAR BAR & GRILL,)	
Respondent.)	
_____)	

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

On May 7, 2019, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint against Respondent, Johnny & Leona Entertainment, LLC d/b/a Rockin’ Cigar Bar & Grill. Complainant charged Respondent with thirty violations of 8 U.S.C. § 1324a and sought \$46,020 in penalties. Respondent filed an answer on June 14, 2019. On July 29, 2019, Complainant filed a Motion to Dismiss Without Prejudice. Complainant seeks to dismiss the complaint without prejudice and states that it “is exercising prosecutorial discretion in not pursuing this matter further[.]” Mot. Dismiss at 2. Respondent did not file a response to the motion.

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). The OCAHO rules do not specifically cover a voluntary dismissal by the complainant, but the Federal Rules of Civil Procedure 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 Federal Rule of Civil Procedure 41(a)(2), the Court may, in certain circumstances, 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. “[M]otions for voluntary

dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.” *Elabor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002). Thus, when considering a motion to dismiss under Rule 41(a)(2), the Court considers “whether an unconditional dismissal will cause the non-movant to suffer plain legal prejudice. If not, it should generally, absent some evidence of abuse by the movant, grant the motion.” *Id.*

Respondent did not file a response to the motion and did not assert that it will suffer prejudice if the Court grants the dismissal without prejudice. This case is still in the initial pleadings stage, Respondent has only filed an answer and the parties have not yet submitted prehearing statements. Complainant indicates that it does not intend to pursue this matter any further. As such, the Court finds that Respondent will not suffer legal prejudice if the Court grants the motion.

The Court finds that Complainant’s Motion to Dismiss Without Prejudice is GRANTED. The Complaint is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated and entered on August 15, 2019.

Jean C. King
Chief Administrative Law Judge