

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

August 31, 2022

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| ROBERT PAUL HEATH, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | OCAHO Case No. 2022B00010 |
| |) | |
| NIHA TECHNOLOGIES, INC. |) | |
| Respondent. |) | |
| _____ |) | |

Appearances: Robert Heath, pro se Complainant
Anantha Paruthipattu, Esq., for Respondent

NOTICE THAT COURT MAY DEEM COMPLAINT ABANDONED

I. PROCEDURAL HISTORY

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) on December 13, 2021. Complainant alleges that Respondent, Niha Technologies, Inc., discriminated against him based on his national origin and citizenship status, and engaged in unfair immigration-related documentary practices, in violation of § 1324b.

On January 19, 2022, Respondent filed an answer. On January 28, 2022, the Court issued an Order for Prehearing Statements. On March 18, 2022, Complainant filed his prehearing statement. On March 31, 2022, Respondent its prehearing statement.

On May 4, 2022, the Court issued an Order Issuing Stay of Proceedings. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427, 1–3 (2022).¹ The Administrative Law Judge (ALJ) determined a sua

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

sponte sixty day stay of proceedings to be appropriate given the circumstances, and ordered the parties to provide a joint status report. *Id.* at 3. On July 13, 2022, the Court issued an Order to Show Cause for Status Report. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427a, 1–3 (2022). In the July 13, 2022, Order, the ALJ instructed:

Thus, the Court ORDERS the parties to file a status report within twenty-one (21) days of the date of this Order. The status report shall be joint . . . [.] If Complainant does not intend to move forward with this litigation, the joint status report shall include a statement to this effect. If the parties are unable to meet and confer, each party shall file a separate status report . . . [.] ***Failure to file a status report may result in a finding that Complainant abandoned his complaint or a default order against Respondent.*** *Id.* at 2–3 (emphasis added).

Pursuant to the July 13, 2022, Order, the parties were to provide a joint status report for OCAHO Case Number 2022B000010 by August 3, 2022. On August 2, 2022, the Court received Respondent’s Status Report. To date, the Court has not received a status report or further filings from Complainant.

II. RESPONDENT’S STATUS REPORT AND DISCUSSION

In accordance with the Court’s Order, Respondent filed a status report describing its efforts to ‘meet and confer’ with Complainant on prehearing conference dates. *See generally* R’s Status Report 1–2. Respondent’s attorney states that, despite repeated communication attempts, co-counsel² has not heard from Complainant since an April 13, 2022, call to discuss a settlement offer. *See id.* at 1, 4 (signed declaration of co-counsel). Respondent represents that it found an obituary for a “Bobby Heath” and a similarly worded obituary for a Robert “Bobby” Paul Heath, Jr. *Id.* at 1–2, Ex. A (Palm Beach Post obituary), Ex. B (Walker’s Funeral Home obituary). According to Respondent, “the Complainant in this matter is very likely deceased.” *Id.* at 2.³

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 Respondent’s co-counsel has not filed a notice of appearance with OCAHO.

³ The Court notifies the parties that in *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1–2 (2022), the ALJ stated his intent to take judicial notice of a death certificate issued for decedent “Robert Heath.” *See also* 28 C.F.R. § 68.41. The death certificate was issued by the State of Florida and lists the date of death as May 18, 2022. *Ancile, Inc.*, 15 OCAHO no. 1411a, at 1.

Respondent requests dismissal based on abandonment if Complainant “does not respond to the Court’s Order to Show Cause for Status Report by August 3, 2022.” *Id.* at 2.

The OCAHO Rules of Practice and Procedure for Administrative Hearings, being the provisions located at 28 C.F.R. pt. 68 (2022), allow for dismissal due to abandonment. 28 C.F.R. § 68.37(b). “A party shall be deemed to have abandoned a complaint . . . if [a] party or his or her representative fails to respond to orders issued by the Administrative Law Judge.” § 68.37(b)(1). Indeed, OCAHO precedent instructs that “non-responsiveness” may indicate “abandonment of [a] complaint that warrants dismissal.” *Caltzoncin v. GSM Insurors*, 12 OCAHO no. 1287a, 3 (2016). In particular, ALJs have long dismissed § 1324b complaints due to abandonment for failure to abide by court orders, even when the complainant appeared pro se. *See Wong-Opasi v. Sundquist*, 8 OCAHO no. 1054, 839–41 (2000) (citations omitted) (collecting OCAHO cases).

Complainant has not complied with the Court’s two recent orders for status reports, and his last filing was in March 2022. The Court is mindful of Complainant’s pro se status and his previous diligence in pursuing this litigation. Further, the Court observes the apparent death, but has not received any filings from an executor or potential substitute party.

Ordinarily, the Court would rule on whether the complaint should be deemed abandoned. The issue in this case, however, is whether the Court can do so when there is evidence to suggest that a complainant is deceased. Accordingly, the Court seeks briefing from the parties regarding the propriety of taking judicial notice of a death certificate, applicable law on the substitution of parties, whether a complaint may be deemed abandoned in the event of death where there has been no appearance by the decedent’s estate or motion to substitute party, or any other matter related to the apparent death the parties deem appropriate. *See Ancile, Inc.*, 15 OCAHO no. 1411a, at 1–2.

The Court thus provides Complainant a last opportunity to address these issues and to demonstrate his intent to pursue OCAHO Case Number 2022B00010. Complainant shall file his submission no later than **September 14, 2022**. If Complainant does not file a submission by that date, the Court may deem the Complaint as abandoned for failure to respond to ALJ orders. § 68.37(b)(1).

Respondent shall file a brief addressing the above no later than **September 28, 2022**.

SO ORDERED.

Dated and entered on August 31, 2022

Jean C. King
Chief Administrative Law Judge