

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

December 7, 2022

ROBERT PAUL HEATH,	)	
Complainant,	)	
	)	8 U.S.C. § 1324b Proceeding
v.	)	
	)	OCAHO Case No. 2021B00058
TRINGAPPS, INC.,	)	
Respondent.	)	
_____	)	

Appearances: Robert Heath, pro se Complainant
Patrick Papalia, Esq., and Tanneika Minott, Esq., for Respondent

ORDER

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 September 20, 2021. Complainant alleges that Respondent, Tringapps, Inc., discriminated against him on account of his national origin and citizenship status, and engaged in unfair immigration-related documentary practices, in violation of § 1324b. The Respondent filed an answer, and both parties filed prehearing statements.

On April 14, 2022, the Court received an electronic letter from Respondent's counsel representing that the parties jointly requested an extension to provide prehearing conference dates and on April 18, 2022, the Court issued an Order Issuing Stay of Proceedings, both due to Mr. Heath's health issues. The stay order required the parties to provide a joint status report within sixty days. *See Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410b, 1 (2022). On July 13, 2022, the Court issued an Order to Show Cause for Status Report. *See Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410c, 1 (2022). The parties did not file status report(s).

On September 8, 2022, the Court issued an Order noticing that this tribunal received a copy of a "Certification of Death" in another case, which names the decedent as Mr. Robert Heath. *See*

Heath v. Tringapps, Inc., OCAHO Case No. 2021B00058, at 2 (September 8, 2022)¹ (citing *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a, 1 (2022)). The Order also ordered Complainant, his estate, or a substitute party to file the previously ordered status report, or alternatively, a written submission showing intent to advance this litigation and good cause for failure to file the joint status report. *Id.* at 4–5. Further, the Court ordered Respondent to file the previously ordered status report, or a separate status report showing good cause for the failure to file a joint report. *Id.* Finally, the Court invited briefing on, inter alia, the propriety of official or judicial notice, the disclosure of apparent death, applicable law on the substitution of parties, and “any other related matter the parties deem appropriate.” *Id.* at 2, 5.

On September 18, 2022, Respondent filed its Response to the September 8, 2022 Order to Show Cause (hereinafter, the status report). To date, neither Complainant, his estate, nor a substitute party has filed a status report or a written submission indicating intent to move forward with this case.

II. LEGAL STANDARDS & DISCUSSION

A. Respondent’s Status Report

Respondent’s status report included a memorandum of law, proposed order, and letter to the administrative law judge (ALJ). *See generally* Status Report.² In the memorandum, Respondent states that it was unable to ‘meet and confer’ with Complainant to file a joint status report. *Id.* at 2–3. Further, “[d]ue to oversight on the part of Counsel for Tringapps, a separate status report was not filed within the required time frame.” *Id.* at 3. Respondent then argues that there is good cause to accept the status report, given the “inadvertent delay” and lack of prejudice to Complainant. *See id.* at 3–4. Through the letter, Respondent posits that this case should be dismissed. *See id.* at 7–8. According to Respondent, “[i]t would be appropriate for this Court to take official notice of [Complainant Robert Heath’s] death,” pursuant to 8 C.F.R. § 68.41 and opportunity to be heard.

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 For clarity, the Court will assign the status report consecutive pagination according to how the pages appear on Adobe PDF.

See id. at 7. Respondent then argues that the case should be dismissed if the Court takes notice of Complainant's death and "no party is substituted" in his place. *See id.* Alternatively, Respondent asserts that the case should be dismissed due to abandonment pursuant to 28 C.F.R. § 68.37(b). *See id.* (citing OCAHO caselaw on abandonment when a party fails to respond or comply with ALJ orders).

Federal Rule of Civil Procedure 55(a) directs that a Court shall issue a default if a party against whom a judgment for relief is sought has failed to "otherwise defend." While default judgments are not favored, the Court also has a duty to protect the integrity of the judicial process. *McKenzie v. Wakulla Cnty.*, 89 F.R.D. 444, 445 (N.D. Fla. 1981); *see also D'amico v. Erie Cmty. Coll.*, 7 OCAHO no. 927, 61, 62 (1997) (noting that "default judgments are disfavored," and should be used only when that party's inaction "causes the case to grind to a halt."). "When a defendant's actions or inactions amount to willful misconduct, gross neglect, or other extreme and unusual behavior, default judgment is appropriate and even necessary to ensure the functioning of the judicial process." *McKenzie v. Wakulla Cnty.*, 89 F.R.D. at 445. In this case, Respondent represented that it made attempts to contact Mr. Heath, and readily admitted its oversight in the separate status report. Status Report 2. The prompt response to the Court's most recent Order, previous timely filings, as well as its representations about contacting Mr. Heath demonstrate an intent to "otherwise defend" itself in this action. *See United States v. Tiki Pools*, 1 OCAHO no. 76, 532, 532 (1989) (citing Federal Rule of Civil Procedure 55(a)). Respondent has also shown that Complainant is not prejudiced by the delay. Accordingly, the Court exercises its broad discretion and will discharge the order to show cause as to Respondent's status report.

While the Court has received and accepted Respondent's status report, the Court has not received a status report from Complainant, his estate, or a substitute party. The Court will address official notice of Mr. Heath's death and applicable law on the substitution of parties.

B. Official Notice of Complainant's Death

28 C.F.R. § 68.41, states in part that "official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice." Federal Rule of Evidence 201 describes a matter for which one might traditionally take judicial notice as:

"[A] fact that is not subject to reasonable dispute because it:

- 1) Is generally known within the trial court's territorial jurisdiction; or
- 2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

Fed. R. Evid. 201(b).

Recently, the OCAHO administrative law judge (ALJ) in *Heath v. Ancile, Inc.* case took official notice of the death certificate for Mr. Heath after providing notice to the parties. *See* 15 OCAHO no. 1411b, 2–3 (2022) (reasoning that “[w]hether under the broader concept of official notice or under the circumscribed evidentiary rule 201 judicial notice, [Mr. Heath’s] death certificate meets that standard[.]”). The *Ancile* ALJ then found that Mr. Heath died on May 18, 2022. *Id.* at 3.

Public records support taking official notice of this fact. Mr. Heath is identified as deceased by the Circuit Court in Palm Beach County, Florida, in a petition for administration of his estate, with a Ms. Tonya Heath appointed as his personal representative. *eCaseView*, Clerk of the Circuit Court & Comptroller Palm Beach Cty., <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Nov. 22, 2022). The Clerk of the Court’s online database is an official publication created by the State of Florida, falling within Rule 201(b)(2)’s stricture of a document coming from a source “whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Further, as a public record the contents of the website can be “readily and accurately determined.” *See id.* In addition, information on Complainant’s death is readily verifiable in two online, publicly available obituaries for Robert Heath. *Robert “Bobby” Paul Heath Jr.*, Tribute Archive, <https://www.tributearchive.com/obituaries/24883485/robert-bobby-paul-heath-jr> (last visited Nov. 22, 2022); *Obituary: Robert Heath*, Palm Beach Post, <https://www.palmbeachpost.com/obituaries/pwpb0216852> (last visited Nov. 22, 2022). The obituaries have indicia of reliability as to material facts; for instance, the biographical data from the Tribute Archive and Palm Beach Post obituaries corroborates information listed in Robert Heath’s death certificate. *See Ancile, Inc.*, 15 OCAHO no. 1411a, at 1 (referencing the legal name, date of birth, date of death, and place of residence shown on the death certificate). Moreover, some federal courts recognize obituaries as a proper foundation upon which to take judicial notice of a death. *See Crews v. Pfizer, Inc.*, No. 2:21-CV-00868-RDP, 2021 WL 5040493, at *1 (N.D. Ala. Oct. 29, 2021) (citations omitted) (“Courts may take judicial notice of obituaries.”); *e.g.*, *United States v. Thomas*, No. CR 01-058 (KSH), 2022 WL 538540, at *3 (D.N.J. Feb. 23, 2022) (taking judicial notice of an obituary notice published online by a funeral home); *Sanders v. Justice*, No. 15-CV-00142-SMY, 2015 WL 1228830, at *4 (S.D. Ill. Mar. 16, 2015) (taking judicial notice of an online newspaper obituary).

The Court finds that based upon the *Ancile* case, the probate records, and public obituaries, the Court has a proper foundation from which to take official notice of Complainant’s death. *See* 28 C.F.R. § 68.41. No one has objected to the suggestion of death, nor that it is an improper subject of official notice. Accordingly, the Court takes official notice of the fact that Complainant Robert Heath died on May 18, 2022.

C. Substitution of Parties

Following official notice of Mr. Heath’s death, the *Ancile* ALJ determined that application of Federal Rule of Civil Procedure 25 (Rule 25), regarding substitution of parties, is appropriate in this forum. *Ancile, Inc.*, 15 OCAHO no. 1411b, at 4 (citing *Lee v. AT&T*, 8 OCAHO no. 924, 9

n.5 (1997)) (“Although the OCAHO rules do not directly address the issue of substitution of parties, the Federal Rules of Civil Procedure may be utilized as a general guideline in any situation not covered by the OCAHO Rules. *See* 28 C.F.R. § 68.1[.]”). Per Rule 25, should a party fail to file a motion “within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). The undersigned similarly finds that Rule 25 may be used as a guideline, is applicable to the facts presented in this circumstance, and will apply the rule in this circumstance.

The Court’s determination that Complainant is deceased would normally trigger the ninety-day window for filing motions for substitution per Rule 25. Still, the Court must ensure that appropriate notice on substitution is given. Indeed, “[c]ourts have noted upon determination that a party is deceased, notice must be provided to that party’s successor in interest or executor, regardless of whether the nonparty has entered an appearance or otherwise advised the court of their interest in the litigation.” *Ancile, Inc.*, 15 OCAHO no. 1411b, at 4 (citations omitted).

The Court hereby provides notice to Complainant’s apparent successor in interest, Ms. Tonya Heath. *See id.* at 5 (noting her identification on the death certificate and on the Palm Beach County Clerk of Court’s public records); *see also eCaseView* (probate record for Complainant, naming his executor). The Court intends to take official notice of Ms. Heath as Complainant’s executor, subject to the parties’ opportunity to be heard. Respondent and Ms. Heath may advise or object, no later than fourteen days from the date of this Order, concerning the Court’s intent to take official notice of Ms. Heath as Complainant’s executor pursuant to 28 C.F.R. § 68.41.

If the Court takes official notice of Ms. Heath as Complainant’s executor, the Court will issue an Order stating as such. Following official notice of Ms. Heath as Complainant’s executor, the Court would start the ninety-day window for filing motions for substitution. If a substitution motion is not made in that time, the case would then be dismissed.

The Court further provides that Ms. Heath be included in the certificate of service.

III. CONCLUSION

The Court discharges the order to show cause for Respondent’s separate status report, as incorporated in the Court’s September 8, 2022, Order, and accepts that status report.

The Court takes official notice that Complainant Mr. Robert Heath died on May 18, 2022.

The Court provides the parties notice that it intends to take official notice of Ms. Tonya Heath as Complainant’s executor. The parties may advise or object, no later than fourteen days from the date of this Order.

Ms. Tonya Heath shall be included in the certificate of service.

SO ORDERED.

Dated and entered on December 7, 2022.

Jean C. King
Chief Administrative Law Judge