

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

March 30, 2023

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
Tamara Hoflejzer, Esq., for the U.S. Department of Justice

ORDER OF DISMISSAL

This case arises under antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Niha Technologies, Inc., violated § 1324b. On January 19, 2022, Respondent filed its answer.¹

On December 5, 2022, this Court issued an Order determining that it had material and reliable evidence of Complainant’s death, and of Ms. Tonya Heath’s appointment as his personal representative. *See Heath v. Niha Techs., Inc.*, 16 OCAHO no. 1427c, 1, 3 (2022).² This Court

¹ The Court’s December 5, 2022 Order provides a detailed procedural history of this case.

² 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

further determined that Ms. Heath had notice of these proceedings. *Id.* The Court found that Federal Rule of Civil Procedure 25 Substitution of Parties (Rule 25), may be used as a guideline and is applicable to the facts presented here. The Court determined that it will apply the rule in this circumstance. *Id.*; *see also* 28 C.F.R. § 68.1.³ The Court advised:

Because the claim[s] survive Mr. Heath’s passing, and upon this Court’s determination that the complainant is deceased and Rule 25 applies, the ninety-day window for filing a motion to substitute commences as of the date of issuance of this [O]rder. *See* Fed. R. Civ. P. 25(a)(1) . . . If a motion to substitute is not made within ninety-days from the date of this Order, this action by Mr. Robert Heath (OCAHO Case No. 2022B00010) may be subject to dismissal.

Id. at 4.

The ninety-day window began on December 5, 2022, and closed on March 5, 2023. To date, the Court has not received substitution motions for this case.

“If the motion [for substitution] is not made 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). As the conditions for dismissal under Rule 25(a)(1) are present in this case, Mr. Heath’s Complaint against Niha Technologies, Inc. (OCAHO Case No. 2022B00010) is DISMISSED without prejudice. Any pending motions are denied as MOOT.

SO ORDERED.

Dated and entered on March 30, 2023.

Jean C. King
Chief Administrative Law Judge

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

³ OCAHO Rules of Practice and Procedure, 28 C.F.R. pt. 68 (2023).

Appeal Information

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order files a timely petition for review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order. Such a petition must conform to the requirements of Rule 15 of the Federal Rules of Appellate Procedure.