

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

ROBERT HEATH,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2022B00034
SMART WORKS, LLC,)	
Respondent.)	
)	

ORDER OF DISMISSAL

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On March 9, 2022, Complainant, Robert Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Smart Works LLC, alleging violations of § 1324b. On April 21, 2022, Respondent filed an answer denying all liability.

On May 19, 2022, the Court disclosed communications by Complainant concerning a health emergency. *See Heath v. Smart Works, LLC*, 16 OCAHO no. 1434, 1 (2022).¹ On August 4, 2022, the undersigned issued a Notice and Order providing notice to the parties of Complainant's apparent death. *See Heath v. Smart Works, LLC*, 16 OCAHO no. 1433a, 1 (2022).

On March 13, 2023, the Court issued an Order which found that Complainant was deceased, and determined Federal Rule of Civil Procedure 25 (Rule 25) as applicable to these proceedings. *See Heath v. Smart Works, LLC*, OCAHO Case No. 2022B00034 (Mar. 13, 2023) (Order). However, the Court declined to begin Rule 25's period for filing substitution motions until Complainant's apparent executor, Tanya Heath, had opportunity to advise the Court on her designation as Complainant's executor. *See id.* at 3–4.

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>.

On May 9, 2023, the Court issued an Order that took official notice of Ms. Heath as Complainant's executor. *See Heath v. Smart Works, LLC*, 16 OCAHO no. 1433b, 1 (2023). The Court observed that service of the Court's March 13, 2023 Order was perfected on Ms. Heath. *Id.* at 2 (citing Fed. R. Civ. P. 25(a)(3)). Having found that Complainant's executor had notice of these proceedings, and that neither party had moved for dismissal based on claim extinguishment, the Court started the 90-day period proscribed by Rule 25(a)(1). *Id.* at 2. The Court stated:

A motion for substitution may be made by any party or by the decedent's successor or representative. Fed. R. Civ. P. 25(a)(1). If a motion for substitution is not made within 90 days from the date of [the May 9, 2023] Order, this action by Robert Heath (OCAHO Case No. 2022B00034 may be subject to dismissal without prejudice. *See id.*

Id. at 3 (internal quotation marks omitted).

The 90-day window proscribed by Rule 25(a)(1) began on May 9, 2023, and closed on August 7, 2023. To date, no person or entity has sought to substitute themselves for the Complainant in 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, Robert Heath's Complaint against Smart Works, LLC (OCAHO Case No. 2022B00034) is DISMISSED without prejudice. Any pending motions are denied as MOOT.

SO ORDERED.

Dated and entered on August 17, 2023.

Honorable John A. Henderson
Administrative Law Judge

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.