

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

ROBERT PAUL HEATH,)	
)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	
)	OCAHO Case No. 2021B00015
AMERITECH GLOBAL,)	
)	
Respondent.)	
_____)	

Appearances: Robert Paul Heath, pro se, Complainant
Rishi Agrawal, Esq., for Respondent

ORDER PROVIDING NOTICE OF SUGGESTION OF DEATH TO SUCCESSOR
AND REISSUING ORDER TO SHOW CAUSE

I. PROCEDURAL HISTORY

On January 28, 2021, Complainant, Robert Paul Heath, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Ameritech Global. The complaint alleges that Respondent discriminated against Complainant based on citizenship status and national origin, in violation of the employment discrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b.

In April 2022, Complainant called OCAHO twice and informed Court staff that he had been hospitalized due to a health emergency. As Respondent was not included on these telephone calls, on June 1, 2022, the Court issued an Order on Complainant’s Communications to the Court, notifying Respondent as to the nature and substance of Complainant’s communications with the Court. *Heath v. Ameritech Global*, 16 OCAHO no. 1435, 3-4 (2022).¹ The Court permitted Respondent to file any

¹ Citations to OCAHO precedents in bound Volumes 1 through 8 include the volume and case number of the particular decision, followed by the specific page in the bound

response it deemed necessary and appropriate regarding Complainant's communications. *Id.* Given Complainant's health emergency and hospitalization, the Court ordered the parties file a status report within thirty days of the date of the Order. *Id.* at 4. Neither party responded to this Order.

On September 15, 2022, the Court issued a Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report. *Heath v. Ameritech Global*, 16 OCAHO no. 1435a (2022). In this Order, the Court put the parties on notice of the suggestion of death of Complainant, Robert Heath, and the Court's intention to take notice of this material fact after giving the parties an opportunity to show the contrary. *Id.* at 2-3 (citing 28 C.F.R. § 68.41,² and then citing *Heath v. ConsultAdd*, 15 OCAHO no. 1395c (2022)). The Court noted that the respondent in an unrelated OCAHO case had filed a notification of Robert Heath's passing, along with a death certificate from the State of Florida for Robert Heath. *Id.* at 3 (citing *Heath v. Ancile, Inc.*, 15 OCAHO no. 1411a (2022)).

Given Complainant's potential death, the Court amended the Order on Electronic Filing dated April 26, 2021, to provide that the parties shall serve a copy of all submissions on Complainant at his last known mailing address. *Heath*, 16 OCAHO no. 1435a, at 3. The Court stated that either party may file a statement of the fact of death and supporting documentation, or a filing disputing the suggestion of death and showing the contrary in accordance with 28 C.F.R. § 68.41. *Id.* The Court further stated that either party may identify Complainant's legal

volume where the decision begins; the pinpoint citations which follow are to the pages, seriatim, of the relevant volume. Pinpoint citations to OCAHO precedents after Volume 8, where the decision has not yet been 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," the LexisNexis database "OCAHO," and on the United States Department of Justice website in <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-decisions>.

² Proceedings in this case will generally be governed by OCAHO's Rules of Practice and Procedure for Administrative Hearings, being the provisions contained in 28 C.F.R. part 68 (2024). OCAHO's Rules are available on OCAHO's homepage on the United States Department of Justice's website. See <https://www.justice.gov/eoir/office-of-the-chief-administrative-hearing-officer-regulations>.

representative or successor and formally move for substitution pursuant to 28 C.F.R. § 68.33(g), or file briefs on the applicability of Federal Rule of Civil Procedure 25(a)(1) to OCAHO proceedings. *Id.* at 3 & n.3 (citing 28 C.F.R. § 68.1). The Court advised that should Complainant's death be established, and his claims survive death, any party or the decedent's successor representative would have ninety days to file a motion for substitution or the action would be dismissed. *Id.* at 3-4.

Additionally, the Court observed that the parties had not filed a status report as required by the Order on Complainant's Communications to the Court. *Id.* The Court explained that when a party fails to respond to an order, including an order for a status report, the Court may order a party to show good cause for its failure to respond. *Id.* at 4 (citations omitted). Thus, the Court ordered the parties to show good cause for their failure to file status reports. *Id.* The Court further ordered the parties to file a status report addressing the suggestion of Complainant's death, how that potential death may affect the posture of this case, and their positions on the advancement of the litigation, including anticipated motions. *Id.* If the parties could not jointly file a response and status report, the Court instructed each party to file its own submission and describe efforts to confer with the opposing party before filing. *Id.* (citing *United States v. Greif*, 10 OCAHO no. 1183, 5 (2013)).

The Court warned that inaction could result in dismissal of the complaint based on abandonment. *Id.* at 5 (citing 28 C.F.R. §§ 68.37(b)-(b)(1), and then citing *Gallegos v. Magna-View, Inc.*, 4 OCAHO no. 628, 359, 362 (1994)). The Court further warned that failure to respond as ordered could lead to dismissal of the case for Complainant's failure to prosecute. *Id.* (citing Fed. R. Civ. P. 41(b)). Finally, the Court warned that failure to respond as ordered could lead to an entry of default against Respondent for failure to defend in these proceedings. *Id.* (citing Fed. R. Civ. P. 55(a)). Neither party filed any response to the Court's Order dated September 15, 2022.

II. DISCUSSION

As highlighted above, neither party has filed a response to the Court's September 15, 2022, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report to state a position on the advancement of litigation in this matter, given the suggestion of Complainant's death.

However, the Court has not provided notice to Complainant's successor or executor regarding this suggestion of death so that she may have an opportunity to

state a position on the advancement of litigation. *See, e.g., Heath v. Ancile, Inc.*, 15 OCAHO no. 1411b, 4 (2022) (“[C]ourts have noted that upon the 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.”).

In a petition for administration of Robert Heath’s estate before the Circuit Court in Palm Beach County, Florida, a judge appointed Ms. Tonya Heath as his personal representative. *eCaseView*, Clerk of the Circuit Court & Comptroller Palm Beach County, <https://appsgp.mypalmbeachclerk.com/eCaseView/search.aspx> (last visited Apr. 4, 2024). This tribunal has previously determined that these probate records fall under Federal Rule of Evidence 201(b) and may serve as foundation from which to take official notice of the identity of a personal representative. *See, e.g., Heath v. Tringapps, Inc.*, 15 OCAHO no. 1410e, 2 (2023) (citations omitted). Therefore, the Court puts the parties on notice that, pursuant to 28 C.F.R. § 68.41, it intends to take official notice of Ms. Heath as Complainant’s personal representative. The parties may advise, within twenty-one days of the date of this Order, on the propriety of taking official notice that Ms. Heath is Complainant’s personal representative pursuant to 28 C.F.R. § 68.41.

As Respondent’s apparent personal representative, Ms. Heath may have an interest in this litigation. Therefore, the Court amends the Order on Electronic Filing dated April 26, 2021, to provide that copies of all filings are to be served on Ms. Heath at the address listed in the certificate of service, in compliance with 28 C.F.R. § 68.6.

The Court also observes that Respondent’s counsel, Rishi Agrawal, failed to respond to the Court’s most recent Order. Indeed, his most recent filing was a motion to dismiss filed on March 24, 2021. Given this silence, OCAHO shall also serve this Order by mail to The Agrawal Firm, LLC, and Ameritech Global directly. If Mr. Agrawal no longer represents Ameritech Global, he shall file a motion to withdraw pursuant to 28 C.F.R. § 68.33(g), or Respondent must file a submission informing the Court that Mr. Agrawal no longer represents Ameritech Global in these proceedings.

Taking into consideration service on Ms. Heath and Respondent, the Court hereby reissues its September 15, 2022, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report and resets the deadlines in that Order as set forth below. OCAHO shall enclose a copy of the September 15, 2022, Notice of Suggestion of Death and Notice and Order to Show Cause for Status Report with this Order.

III. ORDERS

IT IS SO ORDERED that, within twenty-one days of the date of this Order, the parties shall file a response in which they must provide facts sufficient to show good cause for their failure to file a status report as ordered by the Court.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, the parties shall file a status report addressing the suggestion of Complainant's death, stating their positions on the advancement of this litigation, and identifying any anticipated motions. The parties also may use the status report to discuss the propriety of official notice of Complainant's apparent death and the identification of Ms. Tonya Heath as Complainant's apparent personal representative pursuant to 28 C.F.R. § 68.41.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, either party may file a statement of the fact of death of Complainant or a filing disputing the suggestion of death. Either party also may identify Complainant's legal representative or successor and move for substitution.

IT IS FURTHER ORDERED that, within twenty-one days of the date of this Order, the parties may file briefs regarding the notice of suggestion of death and the applicability of Federal Rule of Civil Procedure 25(a)(1) to these proceedings.

IT IS FURTHER ORDERED that the Order on Electronic Filing dated April 26, 2021, is amended to provide that the parties shall electronically file all filings in this case and, in a manner that complies with 28 C.F.R. § 68.6, shall serve a copy of all filings on Complainant at his last known mailing address and Ms. Tonya Heath at the address listed on the certificate of service.

Complainant's failure to respond to the Court's orders may lead the Court to conclude that Complainant has abandoned his complaint and result in its dismissal. *See* 28 C.F.R. §§ 68.37(b)-(b)(1). Complainant also may face dismissal pursuant to Federal Rule of Civil Procedure 41(b).

Respondent's failure to respond to the Court's orders and defend itself in these proceedings may lead the Court to enter a default against it. *See* Fed. R. Civ. P. 55(a); *see also* 28 C.F.R. § 68.9(b).

SO ORDERED.

Dated and entered on April 4, 2024.

Honorable Carol A. Bell
Administrative Law Judge