

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

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
)	8 U.S.C. § 1324a Proceeding
v.)	OCAHO Case No. 2023A00050
)	
GROVE HOTEL, LLC,)	
D/B/A HOLIDAY INN EXPRESS,)	
Respondent.)	
)	

Appearances: Geoffrey P. Gilpin, Esq., for Complainant
Joseph R. Mazzone, Esq, for Respondent

ORDER OF DISMISSAL

This case arises under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324a. On March 7, 2023, Complainant, the United States Department of Homeland Security, Immigration and Customs Enforcement, filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO), alleging that Respondent, Grove Hotel, LLC, d/b/a Holiday Inn Express, violated 8 U.S.C. § 1324a(a)(1)(B). On March 28, 2023, Respondent, through counsel, filed an answer.

On June 6, 2023, the Court issued an Order Memorializing Prehearing Conference, in which it set a status conference for October 3, 2023.

On June 30, 2023, the Court referred this case to OCAHO’s Settlement Officer program for a period of 60 days. The Court designated Administrative Law Judge (ALJ) Bell as the settlement officer in this matter. On September 8, 2023, that sixty-day period elapsed.

On October 31, 2023, the parties filed a Notice of Settlement and Joint Motion to Dismiss. The motion indicates “the parties have reached a full settlement of this ease and in agreement to dismiss this action.” Joint Mot. Dismiss 2 (citing 28 C.F.R. § 68.14(a)(2)). The parties request that the Court dismiss the case as a result. The motion does not indicate whether the parties seek dismissal with or without prejudice. The parties attached a copy of an executed settlement agreement.

Where parties have entered into a settlement agreement, they shall notify the Administrative Law Judge (ALJ) that “the parties have reached a full settlement and have agreed to dismissal of the action. Dismissal of the action shall be subject to the approval of the Administrative Law Judge, who may require the filing of the settlement agreement.” 28 C.F.R. § 68.14(a)(2).

When the parties fail to identify whether they seek a dismissal with or without prejudice, the Court may look to extrinsic evidence, including the settlement agreement, to determine the parties’ intent. *See United States v. RGV Best Burger, Inc.*, 18 OCAHO no. 1492, 4 (2023); *United States v. Chinese Back Rubs*, 17 OCAHO no. 1452, 2 (2022). A review of the settlement agreement indicates that the parties seek a dismissal with prejudice. The parties agree to the issuance of a “final order” in this matter upon the Court’s order granting dismissal of this action.¹ Joint Mot. Dismiss, Tab A at 4. The Respondent admits to violations of the applicable statute in the agreement. These statements, to the Court’s mind, indicate that the parties’ agreement does not envision serial litigation on the same charges. Accordingly, the Court finds that dismissal with prejudice is appropriate in this case.

SO ORDERED.

Dated and entered on December 13, 2023.

Honorable John A Henderson
Administrative Law Judge

¹ The Court notes that the Chief Administrative Hearing Officer (CAHO) recently addressed the Department of Homeland Security’s inclusion of a similar provision in its settlement agreements, one which also asserted that the Agency would issue a “final order” at the conclusion of the litigation. *United States v. Koy Chinese & Sushi Rest.*, 16 OCAHO no. 1416d, 8 (2023) (CAHO Order). Citing to a prior opinion, the CAHO noted that the “Complainant’s practice of issuing its own ‘final orders’ at the conclusion of OCAHO proceedings [were] ‘merely cumulative or repetitive and [without] any independent legal effect as a discrete order separate and apart from [the ALJ’s] decision.’” *Id.* (citing *United States v. Frimmel Mgmt., LLC*, 12 OCAHO no. 1271d, 2 n.3 (2017)). The CAHO further described the Department of Homeland Security’s final order as reflective of, at best, a “ministerial or recordkeeping act.” *Id.* The Court similarly finds the inclusion of the term “final order” in this settlement agreement to be reflective of the Agency’s ministerial act of administratively closing its own records, rather than supplanting the ALJ’s adjudicative function as directed by 28 C.F.R. § 68.14. The Court notes, in further support of this conclusion, that the motion to dismiss and settlement agreement acknowledge the need to move for dismissal of the proceedings before OCAHO. Joint Mot. Dismiss, Tab A at 2-3.