

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

January 15, 2020

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| MARTINE MBITAZE, |) | |
| Complainant, |) | |
| |) | |
| v. |) | 8 U.S.C. § 1324b Proceeding |
| |) | OCAHO Case No. 2020B00005 |
| |) | |
| GREENBELT POLICE DEPARTMENT, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

ORDER DENYING MOTION TO DISMISS

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324b(a)(1)(B) (2017).

On October 11, 2019, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Greenbelt Police Department. Complainant alleges that Respondent refused to hire her based on her citizenship status and national origin and engaged in document abuse in violation of 8 U.S.C. § 1324b. On November 8, 2019, Respondent filed an answer and a motion to dismiss. Complainant did not file a response to the motion to dismiss.

II. STANDARDS

When considering a motion to dismiss, the Court accepts the facts alleged in the complaint as true and construes the facts in the light most favorable to the complainant. *Osorno v. Geraldo*, 1 OCAHO no. 275, 1782, 1786 (1990).¹ Additionally, complaints of pro se complainants “must be

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

liberally construed and less stringent standards must be applied than when a [complainant] is represented by counsel.” *Halim v. Accu-Labs Research, Inc.*, 3 OCAHO no. 474, 765, 777 (1992).

III. DISCUSSION

Respondent contends that the Court should dismiss the complaint because the Greenbelt Police Department is not an entity amenable to suit. In support, Respondent cites only *Boyer v. State of Md.*, 594 A.2d 121, 128 n. 9 (Md. 1991), in which the Maryland Court of Appeals found that, absent a statutory or constitutional provision creating a government agency, an “office” or “department” does not have a unique legal identity, therefore, it cannot be sued under Maryland law. *See also Owens v. Baltimore City State’s Attorney’s Office*, 767 F.3d 379, 393 (4th Cir. 2014). Respondent argues the complaint must be dismissed because no statute or local law creates an entity known as the Greenbelt Police Department capable of being sued. Instead, it contends that the Greenbelt Police Department is an agency or office of the City of Greenbelt, Maryland.

In *Owens*, the Fourth Circuit considered whether the “Baltimore City State’s Attorney’s Office” was a suable entity under 42 U.S.C. § 1983. The *Owens* court explained that Fed. R. Civ. P. 17(b)(3) provides that “the law of the state in which the district court sits determines an entity’s capacity to be sued.” *Owens*, 767 F.3d 379 at 393. Relying on *Boyer*, the *Owens* court held that the “Baltimore City State’s Attorney’s Office” is not a suable entity because Maryland law does not create an entity known as the “State’s Attorney’s Office.” *Id.* at 393–94.

However, district courts have declined to dismiss a plaintiff’s claims when the sole defect is that the plaintiff named a specific department as the defendant, rather than the county or city. *Abunaw v. Prince George’s Corrections Dept.*, 2014 WL 3697967, *2 (D. Md. 2014); *see Strebeck v. Baltimore County Police Dept.*, 2005 U.S. Dist. LEXIS 26570, 2005 WL 2897932, at *1 (D. Md. Oct. 17, 2005) (finding that the Baltimore County Police Department cannot be sued, but “if that were the sole defect in plaintiff’s claims, [the court] would substitute the proper defendant, Baltimore County, for the Police Department[.]”).

In *Abunaw*, the plaintiff sued Prince George’s Corrections Department and Prince George’s Police Department. *Abunaw*, 2014 WL 3697967, *1. The defendants sought dismissal arguing that the defendants were not entities capable of being sued. *Id.* The *Abunaw* court found that the defendants were “attempting to hold [the] *pro se* [p]laintiff to a far too stringent standard.” *Id.* at *2 (citing *Haines v. Kerner*, 404 U.S. 519 (1972) (a *pro se* complaint is held to less stringent standards than formal pleadings drafted by lawyers)). The *Abunaw* court explained that “[w]hile

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

Department Defendants are correct that courts in Maryland have held that ‘[c]ounty police departments are agents of the State and should not be viewed as separate legal entities,’ . . . it would elevate needlessly form over substance to dismiss completely a claim because [the p]laintiff named the specific county entities that allegedly harmed him as opposed to the county itself.’ *Id.* (quoting *Hines v. French*, 157 Md. App. 536, 573 (2004)). Thus, the court denied the defendants’ motion and construed the plaintiff’s claims as against Prince George’s County, Maryland. *Id.*

Similarly, here, Respondent alleges the complaint should be dismissed solely because Complainant named the specific city department that allegedly wronged her, instead of the City of Greenbelt. Since Complainant is pro se, the undersigned construes her complaint more liberally than a pleading filed by an attorney. *Halim*, 3 OCAHO no. 474 at 777. The Greenbelt Police Department is a department within the City of Greenbelt. GREENBELT, MD., GREENBELT CITY CODE, ch. 2, art. 2, §§ 2-62, 2-76. Requiring Complainant to file an amended complaint against the City of Greenbelt would cause further unnecessary delay. As such, the undersigned will substitute the City of Greenbelt for the Greenbelt Police Department as a respondent.

IV. CONCLUSION

Respondent’s Motion to Dismiss is DENIED. The City of Greenbelt is substituted for the Greenbelt Police Department as a respondent in this matter.

SO ORDERED.

Dated and entered on January 15, 2020.

Jean C. King
Chief Administrative Law Judge