

Decisions of the United States Court of International Trade

Slip Op. 07–8

LOUIE MANUTOLI, Plaintiff, v. UNITED STATES SECRETARY OF AGRICULTURE, Defendant.

Before: Richard K. Eaton, Judge
Court No. 04–00622

[Defendant’s motion to dismiss plaintiff’s action for failure to prosecute pursuant to USCIT Rule 41(b)(3) granted. Case dismissed, without prejudice.]

Dated: January 18, 2007

Louie Manutoli, plaintiff, *pro se*.

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, United States Department of Justice; *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, United States Department of Justice (*David S. Silverbrand*); Office of the General Counsel, United States Department of Agriculture (*Jeffrey Kahn*), of counsel, for defendant.

MEMORANDUM OPINION

Eaton, Judge: This matter is before the court on the United States’ motion on behalf of defendant United States Secretary of Agriculture (“defendant” or the “Department”) to dismiss plaintiff Louie Manutoli’s action challenging the Department’s denial of his application for trade adjustment assistance (“TAA”) for failure to prosecute pursuant to USCIT Rule 41(b)(3). *See* Def.’s Mot. Dismiss; *see also* 19 U.S.C. § 2401e (2002). Jurisdiction lies with 19 U.S.C. § 2395(c). For the following reasons, defendant’s motion is granted, and plaintiff’s case is dismissed, without prejudice.

BACKGROUND

Plaintiff is a permit-holding salmon fisherman in Alaska. On November 6, 2003, the Department granted the petition for certification as eligible to apply for TAA benefits filed by several groups representing salmon fishermen from Alaska and Washington State. *See* Trade Adjustment Assistance for Farmers, 68 Fed. Reg. 62,766,

62,766 (Dep't of Agric. Nov. 6, 2003) (notice). The group certification allowed for “[s]almon fishermen holding permits and licenses in the states of Alaska and Washington” to apply individually for a cash payment pursuant to 19 U.S.C. § 2401e. *Id.* On January 15, 2004, plaintiff applied to the Alaska State Farm Service Agency for such a payment. *See* Application for Trade Adjustment Assistance (TAA) for Individual Producers, AR¹ at 3.

The Department denied plaintiff’s application for TAA benefits by letter on November 5, 2004. *See* Letter from Ronald Lord, Deputy Dir., Imp. Policies & Program Div., to Louie Manutoli (Nov. 5, 2004), AR at 16. According to the Department, it denied the application because plaintiff “did not provide all required supporting documentation by the September 30, 2004 deadline.” *Id.* The denial further informed plaintiff that he could seek judicial review of the determination in this Court. *See id.*

On December 2, 2004, plaintiff mailed to the Court a handwritten letter requesting judicial review of the Department’s determination. *See* Letter from Louie Manutoli to United States Court of International Trade (Dec. 2, 2004), AR at 20. The letter was filed with the Court on December 7, 2004 and served to commence his action. *See* Letter from Sarah Allison Thornton, Chief Deputy Clerk, to Louie Manutoli (Dec. 14, 2004) (“Letter I”) at 1 (accepting plaintiff’s letter as “fulfilling in principle the requirements of the summons and complaint for the commencement of a civil action to review a final determination regarding certification of eligibility for [TAA].”). On December 14, 2004, the Office of the Clerk sent a letter to plaintiff notifying him that he had failed to pay the required \$25.00 filing fee and further advised:

It is strongly suggested that you try to obtain legal counsel as soon as possible. When you obtain counsel, please ask him or her to file with our Court their Notice of Appearance as soon as possible. If you are unable to afford counsel and wish the Court to assist you in this, please call me for the forms necessary to make an appropriate motion to the Court.

Letter I at 2.

As of January 2005, neither the Court nor defendant had received any communication from plaintiff. On January 31, 2006, the Office of the Clerk sent another letter to plaintiff, this time including the forms necessary to apply for court-appointed counsel. *See* Letter from Office of the Clerk, Donald C. Kaliebe, Case Management Supervisor, to Mr. Louie Manutoli (Jan. 31, 2006) (“Letter II”). Letter II advised Mr. Manutoli:

¹ Citations to “AR” refer to the administrative record submitted for this action.

It is strongly suggested that you try to obtain legal counsel as soon as possible. If you are unable to afford counsel and wish the Court to assist you in this, please refer to the enclosed forms, which need to be completed in order to make a Motion for Court Appointed Counsel.

Id. When plaintiff did not respond to this second effort to contact him, the Office of the Clerk telephoned plaintiff in February 2006 at the number he provided the Court. The number connected to what appears to have been Mr. Manutoli's former place of business. That being the case, a message reiterating the contents of both Letter I and Letter II was left with a person at that number; however, the Office of the Clerk was informed that Mr. Manutoli was no longer employed at the company. Plaintiff did not return the phone call. *See* E-mail from Donald C. Kaliebe, Office of the Clerk, Case Management Supervisor, to Chambers of Richard K. Eaton, Judge (Sept. 22, 2006, 06:17:00 EST).

On August 22, 2006, approximately twenty months after the last communication was received from plaintiff, defendant filed a motion to dismiss the action pursuant to USCIT Rule 41(b)(3). The motion was served on plaintiff by First-Class Mail. *See* Certificate of Service of David S. Silverbrand (Aug. 22, 2006). For the following reasons, the court grants defendant's motion and dismisses this case; however, it does so without prejudice.

STANDARD OF REVIEW

It is well settled that the decision to dismiss an action based on plaintiff's failure to prosecute a claim lies within the discretion of the court. *See United States v. Rubinstein*, 23 CIT 534, 537, 62 F. Supp. 2d 1139, 1142 (1999); *see also ILWU Local 142 v. Donovan*, 15 CIT 584, 585 (1991) (not reported in the Federal Supplement) ("Every court has the inherent power, in the exercise of a sound judicial discretion, to dismiss a cause for want of prosecution. The duty rests upon the plaintiff to use diligence and to expedite his case to a final determination.") (alteration omitted) (quoting *United States v. Chas. Kurz Co.*, 55 C.C.P.A. 107, 110, 396 F.2d 1013, 1016 (1968)). "The primary rationale underlying such a dismissal is the failure of a plaintiff to live up to its duty to pursue its case diligently." *A. Hirsh, Inc. v. United States*, 12 CIT 721, 723 (1988) (not reported in the Federal Supplement). The Court generally refrains from taking such action unless there is evidence of "a clear pattern of delay, contumacious conduct, or failure to comply with orders of the Court." *Id.* (internal quotation marks and citation omitted). Nonetheless, absent justifiable circumstances, the Court may exercise its discretion to dismiss when faced with a plaintiff's substantial delay in prosecuting its case. *See ILWU Local 142*, 15 CIT at 586 (dismissing plaintiff's action, in part, because plaintiff failed to cite an acceptable rea-

son for its delay and further stating that “[u]nder circumstances in which three years have elapsed, the court finds plaintiff consciously decided not to diligently proceed.”); *see also Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980) (“In this case the last pleading . . . was filed . . . 22 months before the dismissal. . . . In light of the significant inactivity of the plaintiff, we cannot say the district court abused its discretion in dismissing the complaint.”) (emphasis omitted).

DISCUSSION

The court finds that plaintiff has indeed failed to “live up to [his] duty to pursue [his] case diligently.” *A. Hirsch, Inc.*, 12 CIT at 723; *see also* USCIT R. 41(b)(3) (“Whenever it appears that there is a failure of the plaintiff to prosecute, the court may upon its own initiative after notice, or upon motion of a defendant, order the action or any claim dismissed for lack of prosecution.”). The Office of the Clerk has endeavored on three separate occasions to communicate with plaintiff in order to determine if he intended to pursue his case. Plaintiff did not respond to either of the letters or the telephone message left by the Office of the Clerk and, indeed, plaintiff did not contact the court to provide new contact information after he had stopped working at the previously provided number. In fact, nothing has been heard from plaintiff since the commencement of the action in December 2004. It has been over two years since plaintiff last demonstrated an interest in litigating his case.

When faced with similar facts, this Court found:

Since the outset, the plaintiff might have availed herself of the proffered assistance of the clerk’s office to obtain legal representation *in forma pauperis* (concerning which, it should be noted, the clerk’s office expended considerable time and effort for her benefit since receipt of her [summons and complaint] letter), however she has failed, to date, to respond properly. The Court therefore considers it appropriate to dismiss her case, but without prejudice, for failure to prosecute pursuant to USCIT R. 41(b)(3).

See Burton v. U.S. Sec’y of Agric., 29 CIT ___, ___, Slip Op. 05–125 at 3 (Sept. 14, 2005) (not reported in the Federal Supplement); *see also Luu v. U.S. Sec’y of Agric.*, 30 CIT ___, ___, 427 F. Supp. 2d 1362, 1365 (2006); *Ebert v. U.S. Sec’y of Agric.*, 30 CIT ___, ___, 425 F. Supp. 2d 1320 (2006); *Grunert v. U.S. Sec’y of Agric.*, 30 CIT ___, ___, Slip Op. 06–37 (Mar. 13, 2006) (not reported in the Federal Supplement); *M/V Cheri H. Inc. v. U.S. Sec’y of Agric.*, 29 CIT ___, ___, 400 F. Supp. 2d 1382 (2005). Likewise, the court here finds that plaintiff’s failure to take any action with respect to the case despite the several efforts undertaken by the Office of the Clerk warrants the dismissal of plaintiff’s action, but without prejudice.

CONCLUSION

Based on the foregoing, the court grants defendant's motion to dismiss plaintiff's action for failure to prosecute pursuant USCIT Rule 41(b)(3) and dismisses plaintiff's case without prejudice. Judgment shall be entered accordingly.

Slip Op. 07-8

LOUIE MANUTOLI, Plaintiff, v. UNITED STATES SECRETARY OF AGRICULTURE, Defendant.

Before: Richard K. Eaton, Judge
Court No. 04-00622

JUDGMENT

This case having been duly submitted for decision; and the court, after due deliberation, having rendered a decision herein; Now therefore, in conformity with said decision, it is hereby

ORDERED that defendant's motion to dismiss plaintiff's action pursuant to USCIT Rule 41(b)(3) is granted; and it is further ORDERED that this case is dismissed, without prejudice.

Slip Op. 07-9

MATTHEW AARON MILLER, Plaintiff, v. UNITED STATES SECRETARY OF AGRICULTURE, Defendant.

Before: Richard K. Eaton, Judge
Court No. 05-00019

[Defendant's motion to dismiss plaintiff's action for failure to prosecute pursuant to USCIT Rule 41(b)(3) granted. Case dismissed, without prejudice.]

Dated: January 18, 2007

Matthew Aaron Miller, plaintiff, *pro se*.

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, United States Department of Justice; *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, United States Department of Justice (*David S. Silverbrand*); Office of the General Counsel, United States Department of Agriculture (*Jeffrey Kahn*), of counsel, for defendant.

MEMORANDUM OPINION

Eaton, Judge: This matter is before the court on the United States' motion on behalf of defendant the United States Secretary of Agriculture ("defendant" or the "Department") to dismiss plaintiff Matthew Miller's action challenging the Department's denial of his application for trade adjustment assistance ("TAA") for failure to prosecute pursuant to USCIT Rule 41(b)(3). *See* Def.'s Mot. Dismiss at 1; *see also* 19 U.S.C. § 2401e (2002). Jurisdiction lies with 19 U.S.C. § 2395(c). For the following reasons, defendant's motion is granted, and plaintiff's case is dismissed, without prejudice.

BACKGROUND

Plaintiff is a crewman on a fishing boat, where he assists in catching Alaskan pink salmon. According to plaintiff, he was responsible for approximately twelve percent of the boat's total catch from January to December 2002. *See* Application for Trade Adjustment Assistance (TAA) for Individual Producers, AR¹ at 1. On January 20, 2004, plaintiff applied individually for TAA benefits based on his production of pink salmon. *See id.* On December 2, 2004, the Department denied plaintiff's application because it was "submitted after the filing deadline of January 20, 2004." Letter from Ronald Lord, Deputy Dir., Imp. Policies & Program Div., to Matthew Aaron Miller (Dec. 2, 2004), AR at 13. The denial informed plaintiff that he could seek judicial review of the determination in this Court. *See id.*

On January 7, 2005, plaintiff mailed to the Court a letter outlining his reasons for believing that the Department had erroneously denied his application. *See* Letter from Matthew Miller to United States Court of International Trade (Jan. 7, 2005), AR at 12. The letter served to commence this action. *See* Letter from Office of the Clerk, Sarah Allison Thornton, Chief Deputy Clerk, to Mr. Matthew Miller (Jan. 18, 2005) ("Letter I") at 1 ("The Office of the Clerk has reviewed your correspondence, and has accepted it as fulfilling in principle the requirements of the summons and complaint for the commencement of a civil action. . ."). On January 18, 2005, within two weeks after the action was commenced, the Office of the Clerk sent plaintiff the first of two letters advising him of the Court's filing procedures and suggesting that he obtain legal counsel. *See id.* Letter I provided:

It is strongly suggested that you try to obtain legal counsel as soon as possible. When you obtain counsel, please ask him or her to file with our Court their Notice of Appearance as soon as possible. If you are unable to afford counsel and wish the Court

¹ Citations to "AR" refer to the administrative record submitted for this action.

to assist you in this, please call me for the forms necessary to make an appropriate motion to the Court.

Id. at 2. On March 11, 2005, defendant filed its answer to plaintiff's complaint.

There was no further activity in the case for nearly one year. On January 31, 2006, the Office of the Clerk sent the second letter to plaintiff, this time enclosing the forms required for the Court's appointment of counsel. *See* Letter from Office of the Clerk, Donald C. Kaliebe, Case Management Supervisor, to Mr. Matthew Miller (Jan. 31, 2006) ("Letter II"). Letter II advised:

It is strongly suggested that you try to obtain legal counsel as soon as possible. If you are unable to afford counsel and wish the Court to assist you in this, please refer to the enclosed forms, which need to be completed in order to make a Motion for Court Appointed Counsel.

Id. When plaintiff failed to take action in response to the second letter by February 2006, the Office of the Clerk telephoned Mr. Miller. *See* E-mail from Donald C. Kaliebe, Office of the Clerk, Case Management Supervisor, to Chambers of Richard K. Eaton, Judge (Sept. 22, 2006, 06:17:00 EST). As plaintiff was unavailable, a message was left on his answering machine restating the contents of both Letter I and Letter II and urging plaintiff to act on his case. On August 22, 2006, defendant filed this motion to dismiss plaintiff's action for failure to prosecute. The motion was served on plaintiff by First-Class Mail. *See* Certificate of Service of David S. Silverbrand (Aug. 22, 2006). For the following reasons, the court grants defendant's motion and dismisses this case, without prejudice.

STANDARD OF REVIEW

The decision to dismiss an action based on plaintiff's failure to prosecute a claim is in the Court's discretion. *See United States v. Rubinstein*, 23 CIT 534, 537, 62 F. Supp. 2d 1139, 1142 (1999); *see also ILWU Local 142 v. Donovan*, 15 CIT 584, 585 (1991) (not reported in the Federal Supplement) ("Every court has the inherent power, in the exercise of a sound judicial discretion, to dismiss a cause for want of prosecution. The duty rests upon the plaintiff to use diligence and to expedite his case to a final determination.") (alteration omitted) (quoting *United States v. Chas. Kurz Co.*, 55 C.C.P.A. 107, 110, 396 F.2d 1013, 1016 (1968)). "The primary rationale underlying such a dismissal is the failure of a plaintiff to live up to its duty to pursue its case diligently." *A. Hirsh, Inc. v. United States*, 12 CIT 721, 723 (1988) (not reported in the Federal Supplement). The Court generally refrains from taking such action unless there is evidence of "a clear pattern of delay, contumacious conduct, or failure to comply with orders of the Court." *Id.* (internal quotation

marks and citation omitted). Nonetheless, absent justifiable circumstances, the Court may exercise its discretion to dismiss when faced with a plaintiff's substantial delay in prosecuting its case. *See ILWU Local 142*, 15 CIT at 586 (dismissing plaintiff's action, in part, because plaintiff failed to cite an acceptable reason for its delay and further stating that "[u]nder circumstances in which three years have elapsed, the court finds plaintiff consciously decided not to diligently proceed."); *see also Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980) ("In this case the last pleading . . . was filed . . . 22 months before the dismissal. . . . In light of the significant inactivity of the plaintiff, we cannot say the district court abused its discretion in dismissing the complaint.") (emphasis omitted).

DISCUSSION

The court finds that plaintiff has failed to prosecute diligently his action and thus grants defendant's motion to dismiss pursuant to USCIT Rule 41(b)(3). *See* USCIT R. 41(b)(3) ("Whenever it appears that there is a failure of the plaintiff to prosecute, the court may upon its own initiative after notice, or upon motion of a defendant, order the action or any claim dismissed for lack of prosecution."). Since the commencement of plaintiff's action on January 7, 2005, the Office of the Clerk endeavored on three separate occasions to communicate with plaintiff in order to determine if he intended to pursue his case. Despite two letters and a message on plaintiff's answering machine urging him to prosecute his case, for the over two-year period dating back to the commencement of his action, nothing has been heard from plaintiff.

When faced with similar facts, this Court found:

Since the outset, the plaintiff might have availed herself of the proffered assistance of the clerk's office to obtain legal representation *in forma pauperis* (concerning which, it should be noted, the clerk's office expended considerable time and effort for her benefit since receipt of her [summons and complaint] letter), however she has failed, to date, to respond properly. The Court therefore considers it appropriate to dismiss her case, but without prejudice, for failure to prosecute pursuant to USCIT R. 41(b)(3).

See Burton v. U.S. Sec'y of Agric., 29 CIT ___, ___, Slip Op. 05-125 at 3 (Sept. 14, 2005) (not reported in the Federal Supplement); *see also Luu v. U.S. Sec'y of Agric.*, 30 CIT ___, ___, 427 F. Supp. 2d 1362, 1365 (2006); *Ebert v. U.S. Sec'y of Agric.*, 30 CIT ___, ___, 425 F. Supp. 2d 1320 (2006); *Grunert v. U.S. Sec'y of Agric.*, 30 CIT ___, ___, Slip Op. 06-37 (Mar. 13, 2006) (not reported in the Federal Supplement); *M/V Cheri H. Inc. v. U.S. Sec'y of Agric.*, 29 CIT ___, ___, 400 F. Supp. 2d 1382 (2005). Likewise, the court here

finds that plaintiff's failure to take any action with respect to the case despite the several efforts undertaken by the Office of the Clerk warrants the dismissal of plaintiff's action, but without prejudice.

CONCLUSION

Based on the foregoing, the court grants defendant's motion to dismiss plaintiff's case for failure to prosecute pursuant to USCIT Rule 41(b)(3) and dismisses the case, without prejudice. Judgment shall be entered accordingly.

Slip Op. 07-9

MATTHEW AARON MILLER, Plaintiff, v. UNITED STATES SECRETARY OF AGRICULTURE, Defendant.

Before: Richard K. Eaton, Judge
Court No. 05-00019

JUDGMENT

This case having been duly submitted for decision; and the court, after due deliberation, having rendered a decision herein; Now therefore, in conformity with said decision, it is hereby

ORDERED that defendant's motion to dismiss plaintiff's action pursuant to USCIT Rule 41(b)(3) is granted; and it is further

ORDERED that this case is dismissed, without prejudice.

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