COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In the Matter of: Zaji O. Zajradhara, Complainant, v. Nippon General Trading Corporation *dba* Country House Restaurant, Respondent.	)	**Labor Case No. 19-025** **ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

I. INTRODUCTION

This case concerns a labor complaint for a violation of the employment preference statute and retaliation between the above-captioned parties. On June 14, 2019, Respondent filed a Motion to Dismiss the claim for retaliation. Based on a review of the filings and applicable law, the undersigned finds that oral arguments are not necessary.[1] As discussed below, Respondent's Motion to Dismiss the claim for retaliation is hereby **GRANTED**.

II. LEGAL STANDARD

Generally, motions and requests are governed by NMIAC § 80-20.1-470 (e). Thereunder,

> [a]n application for an order or any other request may be made by motion. The hearing officer may allow oral motions or require

[1] As stated in the Referral and Scheduling Order, issued June 3, 2019, the Hearing Officer may issue a ruling based on written arguments or hear oral arguments.

> motions to be made in writing. The hearing officer may allow oral argument or written briefs in support of motions. Within ten days after a written motion is served, or within such other period as a hearing officer may fix, any party to the proceeding may file and serve a response in opposition of the motion. Within three days after an opposition brief is served, the moving party may file and serve a reply to the opposition.

NMIAC § 80-20.1-470 (e). While the regulations limit the permissible motions to be filed at the Administrative Hearing Office, a party may file a motion to dismiss on the following grounds: (1) lack of subject matter jurisdiction; (2) Lack of personal jurisdiction; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted. NMIAC § 80-20.2-130(c)(1). "Whenever it appears by suggestion of the parties or otherwise that the agency lacks jurisdiction of the subject matter, the agency shall dismiss the action." NMIAC § 80-20.2-145(c).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the review of the filings, the undersigned hereby finds and concludes the following:

1. On April 29, 2019, the Complainant filled out a standard complaint form provided by the CNMI Department of Labor. Therein, Complainant checked off a claim for employment preference and retaliation. In support of his claims, Complainant simply writes: "I applied for the job of wait staff, I have experience I am being retaliated against for filing both local & federal claims against this Company. As I was not interviewed-nor hired- As a U.S. Citizen."
2. Considering the complete lack of allegations to support his claim—or give adequate notice and opportunity to defend to Respondent—Complainant was ordered to file additional information.
3. On May 29, 2019, Complainant filed an Additional Affidavit and Amended Complaint. There were no additional allegations to support his claim for retaliation.

4. On June 14, 2019, Respondent filed a Motion to Dismiss ("Respondent's Motion") the claim for retaliation.
5. First, Respondent's Motion argues that Complainant's claim for retaliation should be dismissed for mootness because the Additional Affidavit and Amended Complaint supersedes the original complaint. While Respondent cites to legal authority from an outside jurisdiction, Respondent does not cite to binding or mandatory precedent. The undersigned rejects this argument because Complainant was ordered to file *additional* information meant to supplement his claim. Further, given Complainant's pro se status, the strict application of a technical rule based on legal principles and outside authority is overly harsh.[2]
6. Second, Respondent's Motion argues that Complainant's claim for retaliation should be dismissed because "[t]here is not statutory or regulatory authority for the Department to accept retaliation claims from Mr. Zajradhara against an entity that does not employ him." The undersigned agrees with Respondent's arguments.
7. Generally, a claim for retaliation under this Office occurs when an employer takes any adverse action against an employee for filing a complaint. NMIAC § 80-20.1-455(l) ("An ***employer*** shall not retaliate against an ***employee*** for filing a complaint. Such retaliation is a separate cause of action against the employer.") (Emphasis added); *see also Udani v. Huang Shun Corporation*, LC-17-003(T) (Administrative Order issued October 25, 2017 at pg. 8) ("Employee failed to prove by a preponderance of evidence that her termination was done in retaliation for her filing a labor complaint against her employer about one month before her termination.").
8. Here, Complainant fails to establish a prima facie case for retaliation under NMIAC § 80-20.1-455. Specifically, there is no showing that Complainant was an employee of Respondent at the time of the filing, that Respondent terminated or took adverse

[2] "In applying the rules of procedure to adjudicative proceedings, a hearing officer shall give added accommodation to parties appearing pro se to ensure that no party is prejudiced and that the ends of justice will be served. The hearing officer should take all steps necessary to develop the record fully, including the record adverse to the Department." NMIAC § 80-20.1-460 (b).

action against Complainant, or that this filing was a substantial factor in termination or taking adverse action. In fact, the filings shows that Complainant was not even an employee of Respondent. Accordingly, Complainant fails state a claim for which relief can be granted and dismissal is appropriate.[3]

9. On July 21, 2019, Complainant filed a Motion to Oppose Dismissal ("Complainant's Opposition") by electronic mail.[4]
10. Complainant's Opposition alludes to and makes unsupported arguments as to discrimination. Complainant's Opposition states, "[m]y point of 'retaliation' is based upon, and is meant to demonstrate that the [R]espondent is denying the [C]omplainant employment opportunities in part because the [C]omplainant has previously filed both local and federal charges of discrimination against said corporation; . . . the [C]omplainant[,] though not an attorney believes it is his right to file charge against this employer, based on the fact that the company denied an eligible us' [*sic*] citizen a position with the company without cause." Complainant's Opposition not only confuses local and federal laws, it obscures the claims for employment preference and retaliation. Complainant makes no arguments to satisfy the local regulation against retaliation. Further, Complainant makes no argument that his claim for retaliation based on discrimination falls within the purview and jurisdiction of this Office.
11. The remaining majority of Complainant's Opposition is nonresponsive and outside the scope of the legal arguments made in Respondent's Motion. Complainant's

[3] While the Department's regulations specifically provide for added accommodations to pro se litigants, "there must be a limit to accommodations and liberal construction afforded to pro se pleadings and filings. . . . [I]t is beyond the duty of the adjudicator to make or strain to infer unfounded or baseless arguments on behalf of the party. Accordingly, where even a liberal construction would not add meaning to the filings, dismissal is appropriate." *Zajradhara v. Nippon General Trading Corp.,* SA-2019-001 (Final Order issued June 13, 2019 at pg. 10).

[4] Complainant's opposition was filed, ***unsigned***. Complainant's actions were in violation of NMIAC § 80-20.2-125(b)(5), which requires all motions and petitions to be signed. Considering that "[p]ro se status does not excuse a party from applicable rules," any future unsigned filings from Complainant will not be processed or reviewed. *See Zajradhara v. Nippon General Trading Corp.,* SA-2019-001 (Final Order issued June 13, 2019 at pg. 9).

Opposition also mischaracterizes and misdirects by personally attacking parties, instead of making legal arguments.[5]

12. Considering that Complainant was not an employee of Respondent, Complainant fails to state a claim for retaliation under NMIAC § 80-20.1-455(l). Further, in the event that Respondent's claim for retaliation is made pursuant to federal law, this Office lacks jurisdiction to hear, enforce, or adjudicate said claim.

IV. CONCLUSION

Based on the foregoing, Complainant's claim for retaliation is hereby **DISMISSED**.

Oral arguments for Respondent's Motion for Sanctions will be heard during the previously noticed Prehearing Conference, scheduled for August 27, 2019 at 1:30 p.m. at the Administrative Hearing Office. All parties, including the assigned Investigator, are ordered to appear. The parties should be prepared with legal arguments and evidence to support their claims regarding Complainant's alleged history of harassment and frivolous filings, not limited to previous filings, reports, resolutions, written communications, or testimony.

Enforcement may, but is not required to, file a brief or present evidence with respect to the allegations of harassment and/or frivolous filings.

So ordered this **1st** day of August, 2019.

/s/
Jacqueline A. Nicolas
Administrative Hearing Officer

[5] For example, Complainant writes, "Attorney [S]coggins is . . . play acting as though he is an unbiased neutral third party . . . ." Complainant also writes that "attorney scoggins even goes further in coaching/instructing, giving legal advice to the hearing officer within his motion . . . ." As the opposing counsel on record submitting a legal motion, Complainant clearly does not understand party roles or applicable rules requiring motions to be supported by arguments with legal authority. Complainant also accuses the Secretary of Labor as trying to stop him from filing complaints. This is unfounded and completely irrelevant to a retaliation claim. Further, the Administrative Hearing Office accepts all completed filings—this is supported by the fact that Complainant has filed over 100 labor cases in the past three years, many of which have been withdrawn, dismissed for failure to state a claim, or settled. Complainant's continuous attempts to mischaracterize or misdirect are futile and unpersuasive. Complainant only jeopardizes his own credibility.