



U.S. SECURITY ASSOCIATES, INC.,

ARB CASE NO. 13-003

PLAINTIFF,

ALJ CASE NO. 2012-OFC-004

v.

DATE: June 20, 2013

OFFICE OF FEDERAL CONTRACT  
COMPLIANCE PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR,

,  
DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**Appearances:**

*For the Plaintiff:*

John C. Fox, Esq.; Jay J. Wang, Esq.; and Alexa Morgan, Esq.; *Fox, Wang & Morgan*; San Jose, California and Linda Cabanna-Wilk, Esq. and Karen Tyner, Esq.; *U.S. Security Associates, Inc.*, New York, New York

*For the Defendant:*

M. Patricia Smith, Esq.; Christopher Wilkinson, Esq.; Beverly I. Dankowitz, Esq.; Consuela A. Pinto, Esq.; Theresa Schneider Fromm, Esq.; and Kiesha N. Crockett; *United States Department of Labor*, Washington, District of Columbia

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*

**FINAL DECISION AND ORDER DISMISSING COMPLAINT AS MOOT**

The Plaintiff, U.S. Security Associates, Inc. (USSA), avers that the Administrative Review Board has subject matter jurisdiction of this case under Executive Order 11246, as amended;<sup>1</sup> the Declaratory Judgment Act;<sup>2</sup> and Federal Rule of Civil

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<sup>1</sup> Executive Order 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965), was amended by Executive Order 11375, 32 Fed. Reg. 14303 (Oct. 13, 1967) (adding gender to list of

Procedure 57. Executive Order 11246 gives the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) authority to ensure that Federal contractors and subcontractors doing business with the Federal government comply with the laws and regulations requiring nondiscrimination and equal opportunity in employment.<sup>3</sup>

The Plaintiff filed this action on June 20, 2012, with the Department of Labor's Office of Administrative Law Judges seeking declaratory relief as to whether the manner in which OFCCP selects establishments for compliance reviews violates its Fourth Amendment rights protecting against unreasonable searches and seizures. On September 17, 2012 an Administrative Law Judge (ALJ) dismissed the complaint for lack of subject matter jurisdiction finding that "the regulations contemplate that [the Office of Administrative Law Judges] obtains the regulatory authority to adjudicate an OFCCP dispute only upon the filing of an administrative complaint by OFCCP through the Office of the Solicitor."<sup>4</sup>

USSA filed its Exceptions to the ALJ's Dismissal with the Administrative Review Board,<sup>5</sup> OFCCP filed a response, and USSA filed a rebuttal. On June 6, 2013, OFCCP advised the Board that while the matter has been pending before the ARB, USSA and OFCCP have resolved their dispute. OFCCP avers:

Of the 21 reviews that USSA has challenged, USSA has submitted the requested documents or admitted it should have prepared affirmative action plans ("AAPs") and is prepared to enter into a conciliation agreement to remedy the violation, or OFCCP has withdrawn the scheduling letters or has closed the review. . . . Because of these developments, USSA has no basis to challenge OFCCP's selection of its 21 facilities for review, and thus there is no basis for declaratory relief.<sup>[6]</sup>

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protected characteristics), and Executive Order 12086, 43 Fed. Reg. 46,501 (Oct. 5, 1978) (consolidating enforcement function in the Department of Labor).

<sup>2</sup> 28 U.S.C.A. §§ 2201-2202 (Thomson/West 2006).

<sup>3</sup> These provisions are implemented through 41 C.F.R. Parts 60-30 (Executive Order 11246).

<sup>4</sup> *U.S. Security Associates, Inc., v. OFCCP*, ALJ No. 2012-OFC-004, slip op. at 5 (Sept. 17, 2012).

<sup>5</sup> 41 C.F.R. § 60-30-28.

<sup>6</sup> Defendant OFCCP's Unopposed Motion to Dismiss Appeal as Moot at 2 (footnote omitted). OFCCP further notes:

OFCCP further avers that the Board has held that it exercises discretion in determining whether to terminate a proceeding as moot<sup>7</sup> and that the Board should exercise such discretion in this case.<sup>8</sup> Finally, OFCCP states that USSA's counsel has informed OFCCP's counsel that USSA does not oppose the withdrawal of the appeal.

Accordingly, given the apparent mootness of the issue presented for review and OFCCP's averment that USSA does not oppose the withdrawal of the appeal, we **DISMISS** USSA's appeal.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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For the facilities for which USSA has submitted the requested documents, USSA has thus consented to the compliance evaluation and thus cannot raise any issue regarding how its selection violated the Fourth Amendment. *See OFCCP v. Bank of America*, ARB No. 00-079, slip op. at 14 (March 31, 2003)(recognizing voluntary contemporaneous consent to the Fourth Amendment warrant requirement). For those that OFCCP has either closed the review or withdrawn the scheduling letters, there is no impending search to implicate the Fourth Amendment. For the Kernersville, NC facility, USSA had admitted that AAPs should have been prepared and thus seeks a Conciliation Agreement to remedy the violation and to prepare AAPs in the future in accordance with its obligations.

Defendant OFCCP's Unopposed Motion to Dismiss Appeal as Moot at 2 n.1.

<sup>7</sup> Citing *Lucia v. American Airlines*, ARB Nos., 10-014, -015, -016; slip op. at 5 (ARB Sept. 16, 2011).

<sup>8</sup> Defendant OFCCP's Unopposed Motion to Dismiss Appeal as Moot at 3.